2. Company Law

- **Commencement :** The Companies Act, 2013 came into force on 12 September 2013
- **Extent of the act :** It extend to the whole of India.
- The Act is divided into 29 chapters containing 470 sections and 7 schedules.
- **Scope of the Act :** The provisions of this Act shall apply to;

(a) Companies incorporated under this Act or under any previous company law

(b) Insurance companies, except as far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

(c) Banking companies, except as far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;

(d) Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

(e) Any other company governed by any special Act for the time being in force, except as far as the said provisions are inconsistent with the provisions of such special act; and

(f) Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications, or adaptation, as may be specified in the notification.

Overview of Company Law

Company Law in India is the cherished child of the English parents. Our various Companies Acts have been modelled on the English Acts. Following the enactment of the Joint Stock Companies Act, 1844 in England, the first Companies Act was passed in India in 1850.

The Companies Act, 1956 was enacted with a view to consolidate and amend the earlier laws relating to companies and certain other associations. The act came into force on 1st April 1956. This Companies Act was based largely on the recommendations of the Bhabha Committee. This Act was the longest piece of legislation ever passed by our Parliament. Amendments have been made in this act periodically. The Companies Act, 1956 consisted of 658 sections and 15 schedules.

Company Bill, 2012

The Companies Bill, 2009 after introduction in Parliament was referred to the Parliamentary Standing Committee on Finance for examination, which submitted its report to Parliament on 31st August 2010. Certain amendments were introduced in the Bill in the light of the report of the committee and a revised Companies Bill, 2011 was introduced. This version was also referred to the Hon'ble Committee, which suggested certain further amendments. The amended Bill was passed by the Lok Sabha on 18th December 2012 and by the Rajya Sabha on 8th August 2013. The Bill was retitled as Companies Bill, 2012.

Companies Act, 2013

The Companies Bill, 2012 finally became the Companies Act, 2013. It received the assent of the President on August 29, 2013 and was notified in the Gazette of India on 30.08.2013. Companies Act, 2013 has undergone amendments four times so far. Companies (Amendment) Act, 2015 and Companies (Amendment) Act, 2017 aimed at enhancing efficiency and promoting ease of doing business. The act was also amended by The Insolvency and Bankruptcy Code, 2016 and Finance Act, 2017. The Insolvency and Bankruptcy Code, 2016 led to omission of various sections i.e. section 253 to section 269, section 289, section 304 to section 323 and section 325. The Finance Act, 2017 amended section 182 with regard to prohibitions and restrictions regarding political contributions. So far ministry has come out with several circulars, notifications, orders, and various amendment rules to facilitate better and smooth implementation of the Act.

Key features of Companies Act, 2013 (can be included in key points of companies act)

1. The idea of "dormant companies" introduced (companies not engaged in business for two consecutive years are often declared as dormant).
2. National Company Law Tribunal introduced.
3. Provision of self-regulation with disclosures/transparency rather than government approval primarily based regime.
4. Introduction of maintenance of documents in electronic form.
5. Speedier merger and acquisitions together with short mergers and cross border mergers.
6. For companies having net assets of 1 Crores or less, then official liquidators are authorized with adjudicatory powers.
7. Idea of "one Person Company" introduced.
8. Concept of independent directors enclosed as a statutory requirement.
9. Women directors for a prescribed category of firms.
10. Mandatory provision for constitution of Company Social Responsibility (CSR) committee and the formulation of CSR policy.
11. The term "Key Managerial Personnel" and "Promoter" has been defined to affix the responsibility on main functionaries of the company.
11. The term "Key social control Personnel" and "Promoter" has been outlined to affix the responsibility on main functionaries of the corporate.
12. Duties of director to shareholders, employees, the community and therefore the atmosphere outlined.
13. Listed companies are needed to own one director representing little shareholders.
14. Companies Act, 2013 places a restriction on the maximum number of directorships up to 20 companies of which 10 can be public companies.
15. Without taking order from the magistrate, search and seizure of documents, during investigation can be done.
16. Seizing assets or discharge of unlawful profits of company under enquiry.
17. Rigorous norms created for the accepting the deposits from the general public.
18. Internal audit for larger companies and auditor isn't approved to perform specific non audit services.

19. Extensive civil and criminal liability for an auditor in case of non-compliance.
20. National Financial Reporting Authority (NFRA) to be constituted.

Meaning of Company

"Company" in the common usage refers to a voluntary association of individuals formed for the purpose of attaining a common social or economic end.

In other words, a company is an artificial or legal person created and devised by the laws for a variety of purposes such as promotion of charity, art, research, religion, commerce, or business.

A company may be defined as "an incorporated association which is an artificial-person created by law, having a separate entity, with a perpetual succession, a common seal, capital divided into transferable shares and carrying limited liability."

Prof. Haney : "A company is an incorporated association which is created by law, having a separate entity with a perpetual succession and a common seal."

According to Justice Lindley a company means association of persons who contribute in shape of money or money's worth to a common stock and employ it for some specific purpose.

Definition of Yale Law Journal: "A company is an intricate, centralized, economic, administrative structure run by professional managers who hire capital from the investors".

Definition of a Company : Section 2(20) of the Companies Act, 2013 defines a company as "a company incorporated under this Act or under any previous company law."

The Ministry of Corporate affairs introduced the Company Act, 2013 to guarantee the transparency in the operations of the corporate world. If the Company Act, 2013 get success in achieving its desired objectives, it will accelerate the expansion pathway of the nation. The Ministry has recognised special courts with the aim of trial of offences punishable in the companies Act, 2013.

The Ministry of Corporate Affairs (MCA) administers the following acts of the Central Government;

1. Companies Act, 2013
2. Companies Act, 1956
3. Competition Act, 2002
4. The Insolvency & Bankruptcy Code, 2016
5. The Charted Accountant Act, 1949

Key concepts of company

(1) **One-person company :** The 2013 Act introduces a new type of entity to the existing list i.e. apart from forming a public or private limited company, the act enables the formation of a new entity a 'one-person company' (OPC). An OPC means a company with only one person as its member (section 3(1)).

(2) **Private company :** The 2013 Act introduces a change in the definition for a private company, the new requirement increases the limit of the number of members from 50 to 200. [section 2(68).

(3) **Small company :** A small company has been defined as a company, other than a public company.

(i) paid-up share capital of which does not exceed fifty lakh rupees, or such higher amount as may be prescribed which shall not be more than ten crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees: Provided that nothing in this clause shall apply to : (A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act; (section 2(85)).

(4) Dormant company : A company formed and registered under this 2013 for a future project or to hold an asset or intellectual property and has no significant accounting transaction such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company. (Section 455)

(5) Nidhi company : Nidhi Company means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongest its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.(section 406)

Characteristics of company

1. An Incorporated Association : A company has to be incorporated or registered under the prevalent Companies Act. Registration creates a company and it is compulsory for all associations or partnership having members more than 10 in banking and 20 in any other trading activity.

2. An Artificial Person Created by Law : A Company is a creation of law and is sometimes called an artificial person. It does not take birth like natural person but comes into existence through law. But a company enjoys all the rights of a natural person. It has right to enter into contracts and own property. It can sue and be sued in its own name. It is an artificial person so it cannot take oath, cannot presented in court, and cannot be divorced or married.

3. Separate Legal Entity : A Company is an artificial person and has a legal entity quite distinct from its members. Being separate legal entity, it bears its own mane and acts under a corporate name. It has a seal of its own, its assets are separate and distinct from those of its members. Its members are its owners, but they can be its creditors simultaneously as it has a separate legal entity. A shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The shareholders are not agents of the company and so they cannot bind it by their acts.

4. Company is not a citizen : The company, though a legal person, is not a citizen under the Citizenship Act, 1955 or the Constitution of India.

5. Perpetual Succession : The life of the company is not related with the life of members. Law creates the company and dissolves it. The death, insolvency, or transfer of shares of members does not, in any way, affect the existence of a company.

It is quoted by Professor L.C.B. Gower, "Members may come and go, but the company can go on forever. During the war all the members of one private company, while in general meeting, were killed by a bomb, but the company survived — not even a hydrogen bomb could have destroyed it"

According to Tennyson : "For men may come, men may go. I go on forever." i.e. in the case of a company it may be said that "members may come and go but company goes on forever. "It is a legal person come into being by law and only law can bring its end, none else.

6. Common Seal : On incorporation, a company becomes legal entity with perpetual succession and a common seal. The common seal of the company is of great importance. It acts as the official signature of the company. The name of the company must be engraved on the common seal. A document not bearing the common seal of the company is not authentic and has no legal importance.

7. Nationality : Though it is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

8. Limited Liability : It is also an important feature of the company. If anything goes wrong with the company, the risk of the member is only to the extent of the amount of his shares and nothing more. He is only responsible to pay the remaining amount on the share when called upon by the company.

9. Separate Property : A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. The company is the real person in which all its property is vested, and by which it is controlled, managed and disposed of.

10. Transferability of Shares : A shareholder can transfer his shares to any person without the consent of other members. Under AOA, a company can put certain restrictions on the transfer of the shares, but it cannot altogether stop it. Private company can put more restrictions on its shareholders on the transferability of shares.

11. Limitation of Work : The area of work of a company is fixed by its charter (MOA). A company cannot do anything beyond the powers defined in it. Its action is therefore, limited. In order to do work beyond the MOA, there is a need for its alteration.

12. A Voluntary Association for Profit : A company is a voluntary association of persons to earn profits. It is formed for the fulfillment of some public good and whatsoever profit is divided among its shareholders. A company cannot be formed to carry on any activity against the public and having no profit motive.

13. Representative Management : Shareholders of a company are widely scattered. It is not possible for all the shareholders to take part in the management of the company. They leave this to the representatives; the Board of Directors and the company is managed by the BOD.

14. Termination of Existence : A company created by law, carries on its affairs according to law and ultimately is affected by law. Generally, the existence of a company is terminated by winding up.

15. Capacity to sue or to be sued : The company is entitled to sue for damages in libel or slander as the case may be.

16. Incorporated by a person or persons : A company is an institution incorporated by a person or person. A company may be incorporated either by a person (i.e., an individual who is a citizen of India and resident in India) or by any two or more individuals and/or artificial persons.

It should be noted that a One Person Company or OPC can be incorporated by an individual but any other kind of company may be incorporated by any two or more persons.

17. Subscriber/Subscribers : Every company is incorporated by its subscriber/subscribers signing on the memorandum. In case of a OPC, there can be only one subscriber. But **in case of any other private company** (because a OPC is also a private company), there must be **at least 2 subscribers and 7 in case of a public company.**

The **only subscriber or all the subscribers** to the memorandum express their desire to the Registrar to form a company and request him to register it in pursuance of the memorandum submitted to him.

It may be noted that **in case of a OPC,** the only subscriber must be an **individual who is citizen of India and resident in India**.

18. Minimum and Maximum Number of Members : The person or persons signing to memorandum of a company is or are the first member/members of the company. Consequently, in case of a OPC, the only subscriber to the memorandum is the only member of it. **No other person can become member of a OPC so long as the only member survives.**

In case of **any other private company**, there needs to be **at least 2 members.** However, it can have **maximum of 200 members.**

A public company requires **at least 7 members.** There is **no limit on maximum number of members** of a public company.

19. Share Capital : Companies may be registered with or without share capital. Even the companies with a share capital are no more mandatorily required to have a minimum paid-up capital. Now, the companies with a share capital may be incorporated with any amount of paid-up share capital. [Sec. 2(68) and Sec. 2(71) as **amended by the Companies (Amendment) Act, 2015], But share capital of a OPC cannot exceed ₹ 50 lakh.**

20. Capacity to Contract : A company has the capacity to contract within the scope of its memorandum of association. Any contract made beyond the scope of memorandum renders it *ultra vires*.

21. Managerial Team : A company is managed by a Board of directors elected by the members/shareholders of the company. The Board of directors determines the major policies of the company. There are some key managerial personnel such as managing director, whole-time director, company secretary etc. Shareholders do not directly participate in the management of the company.

21. Governance by Majority : A company is governed by the rule of majority.

22. Statutory Obligations : A company is required to fulfill a large number of statutory obligations. Holding directors' and company meetings, filing copies of resolutions passed at the company meetings, maintaining books of accounts and registers, preparing and filing duly audited annual financial statements, filing annual return, etc. are some of the statutory obligations of a company under the Companies Act and regulations of the Ministry of Company Affairs or MCA.

23. Business or Property in the Names Other than Its own : It is an important feature of a company that it can own property and carry on its business in the names other than of its own.

24. Business of goods or services : A company can carry on business of production or sale of goods or rendering of services within the scope of its memorandum.

25. Existence Independent of Estate or Undertaking : The identity and existence of a company is independent of its estate or the undertakings.

26. Residence : A company has its residence. For communication purposes, the residence of the company is the place of its registered office.

27. Social Responsibility : Every company has social responsibility and tries to fulfill it. But now the Company Act, 2013 makes it mandatory for the companies of specified size (on the basis of financial parameters) to spend at least 2 per cent of their average net profits of the preceding three years on activities covered by the social responsibility policy of the company. [Sec. 135]

28. May assume enemy character : Normally a company cannot be a friend or foe because it is a juristic person and does not have its body, soul and mind.

Doctrine of Lifting of Corporate Veil

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine **"lifting of or piercing the corporate veil".**

- As the company is a separate legal entity, is has been provided with a veil, compared to that of individuals who are managing the company.
- But if the court feels that such veil has to been used for any wrongful purpose, the court lifts the corporate veil and makes the individual liable for such acts which they should not have done or doing in the name of the company.

Circumstances to Lift the Corporate Veil

The corporate veil can be lifted either under the :

- Statutory provisions or
- Judicial interpretations

(A) Under Statutory Provisions : The veil of corporate personality may be lifted certain cases or pierced as per expressed provisions of the Companies Act, 1956. In other words, the advantage, of 'distinct entity' and limited liability' may not be allowed to be enjoyed in certain circumstances.

Statutory Circumstances for Lifting the Corporate Veil

The statutory provisions are provided under the Companies Act, 1956

The other circumstances are decided through judicial interpretations, which are based on facts of each case as per the decisions of the court

- **Reduction in Membership :** Less than seven in public company and less than two if it is a private company.

- **Failure to Refund Application Money :** After the issue of shares to the public, the company has to pay back the initial payment to the unsuccessful applicants (SEBI Guidelines- 130 Days), if they fail to do so, the corporate veil can be lifted.
- **Mis-Description of Companies' Name :** While signing a contract if the company's name is not accurately described, then the corporate veil can be lifted.
- **Misrepresentation in The Prospectus :** (Derry Vs Peek) In case of misrepresentation, the promoters, directors, and every other person responsible in this matter can be held liable.
- **Fraudulent Conduct :** In case the company is carried on with an intent to defraud the creditors, then the court may lift the corporate veil.
- **Holding and Subsidiary Companies :** A subsidiary has a distinct legal entity from the holding company other than in a few circumstances, so if otherwise shown, the court may under the act, lift the corporate veil of the subsidiary company.
- **Issue of Prospectus of Fraudulent Purposes :** Sometimes, some persons apply for securities of a company on the faith of a prospectus issued with the intent to defraud the applicants. In such a case, every promoter, director, expert and every other person who authorised the issue of such prospectus shall be personally responsible. Their personal responsibility shall be **without any limitation of liability** for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
- **Failure to repay deposits accepted for fraudulent purposes :** Sometimes, a company fails to repay any deposit or any interest thereon within the specified time. Moreover, it is also proved that the deposits had been accepted with the intent to defraud the depositors or for any fraudulent purpose.
- **Failure to Repay Deposits Accepted for Fraudulent Purposes:** Sometimes, a company fails to repay any deposit or any interest thereon within the specified time. Moreover, it is also proved that the deposits had been accepted with the intent to defraud the depositors or for any fraudulent purpose. In such a case, every officer of the company who was responsible for the acceptance of such deposit shall be personally responsible for the repayment. Their personal **responsibility shall be without any limitation of liability,** for all the damages that may have been suffered by the depositors.
- **Investigation of Ownership of a Company:** The Central Government may appoint inspectors to investigate and report on membership of any company and other matters relating to the company for the following purposes:
  (i) For determining the true persons who are or have been financially interested in the success or failure of the company.
  (ii) For determining the true persons who are or have been able to control or materially influence the policy of the company.
- **Investigation of the Affairs of a Company:** Where an inspector is appointed to investigate the affairs of a company, he may investigate also the affairs of any other body corporate of the same group or the same management.

- **Non-Payment of Income Tax:** As per provisions of the Income Tax Act, the company is liable to pay tax on its income or deduct tax at source on certain payments. If the company fails to do so, the court may lift the company's veil and identify the persons responsible for the default.

(B) Under Judicial Interpretations : It's difficult to deal with all the cases in which courts have lifted or might lift the corporate veil. Some of the cases where the veil of the corporation was lifted by judicial decisions may be discussed to form an idea as to the kind of circumstances under which the facade of corporate personality will be removed or the persons behind the corporate entity identified and penalized, if necessary.

Circumstances to Lift the Corporate Veil Through Judicial Interpretations

The circumstances are under Judicial interpretations by the court are as follows :

1. Protection of Revenue : Whenever a company uses its name for the purpose of tax evasion or to circumvent tax obligations. In such a case court may disregard the corporate entity and lift the veil in order to protect government.

2. Prevention of Fraud or Improper Conduct : The incorporation has been used for fraudulent purpose, like defrauding the creditors, defeating the purpose of law etc.

Determination of The Character of The Company: Company being an artificial person cannot be an enemy or friend. However, during war, it may become necessary to lift the corporate veil and see the persons behind as to whether they are enemies or friends. It is because, though a company enjoys a distinct entity, its affairs are essentially run by individuals.

3. In Case of Economic Offences : *In Santanu Ray Vs. Union of India*, it was held that in case of economic offences a court is entitled to lift the veil of corporate entity and pay regard to the economic realities behind the legal facade. In this case, it was alleged that the company had violated section 11(a) of the Central Excises and Salt Act, 1944. The Court held that the veil of the corporate entity could be lifted by adjudicating authorities so as to determine as to which of the directors was concerned with the evasion of the excise duty by reason of fraud, concealment or wilful mis-statement or suppression of facts or contravention of the provisions of the act and the rules made there under.

4. Where Company is used to Avoid Welfare Legislation : Where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen.

Workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd. The Supreme Court upheld the piercing of the veil to look at the real transaction in case of

5. Where Company is used for Some Illegal or Improper Purpose : Courts have shown themselves willing to lift the veil where device of incorporation used for some illegal or improper purpose.

6. To Punish for Contempt of Court : If a company is formed in order to avoid the benefits to the workers like bonus, or other statutory benefits.

7. For Determination of Technical Competence of The Company : The Supreme Court in one of its recent decision has delivered an interesting and incredibly significant judgment with regard to lifting of corporate veil.

8. Where Company is a Mere Sham or Cloak : Where the corporate personality is used for preventing or evading legal obligations, the Court may lift the corporate veil and find out the persons liable for those obligations.

Other Circumstances

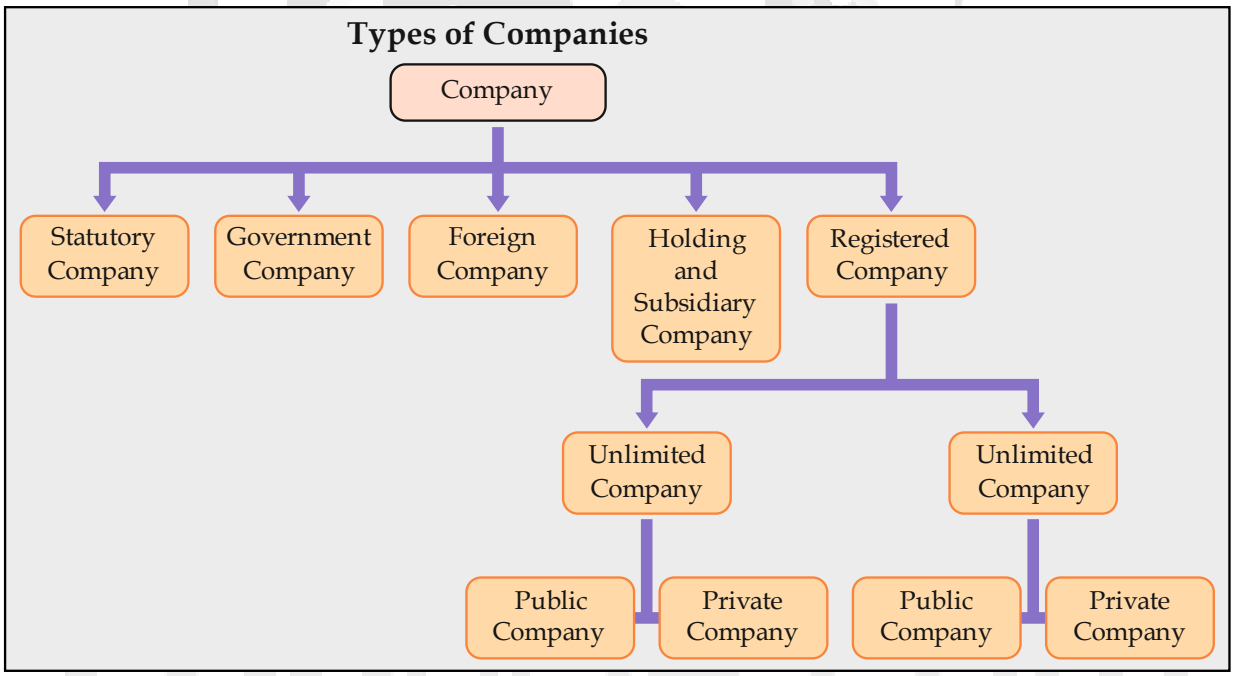
For Determining the Technical Competence of The Company : To look into the competency of the company or the shareholders or promoters.

1. Misdescription or Non-Disclosure of Name of the Company : It is the duty of every officer concerned to get the name of the company printed/written on every business letter, letter papers, hundies, promissory notes, bill of exchange, and other documents as may be prescribed. In such a case, the officer who issued or authorized the issue of such a bill/cheque would be personally liable under it.

2. For Determination of the Character of the Company : A company is not a natural person with mind or conscience. It, therefore, can be neither loyal nor disloyal. It can be neither a friend nor a foe. But a company may assume enemy character if the persons in control of its affairs are residents of an enemy country or such persons act under the direction or control of any enemy. Wherever it is suspected, the courts may pierce the corporate veil and examine the character of the company by looking at the persons in real control of the company's affairs.

3. Where Company is Acting as an Agent or a Trustee of the Shareholders : Where a company is formed for acting as agent for its shareholders, the shareholders will be held liable for the acts of the company.

Kinds of Companies



(A) Unincorporated companies

The entity which is formed but not registered under the Companies Act, 2013 or under any earlier company law is known as an unincorporated or unregistered company. Unregistered companies are:

(i) Partnership firms
(ii) Limited liability partnership
(ii) Cooperative society
(iv) Any Society

(v) Any other business entity. [Sec. 366(1)]

All these entities may at any time apply for registration under this act.

(B) Incorporated Companies

The incorporated company is a company formed by or registered under any statute or law. Incorporate companies can be classified as below:

(a) Chartered Companies : Any Company incorporated within a special charter or proclamation issued by the head of state, are known as chartered companies. The Bank of England, The East India Company, Chartered Bank etc. and so forth are the instances of chartered companies.

(b) Statutory Company :

- A statutory company is brought into existence under the act passed by the legislature of the country or state. Powers, responsibilities, liabilities, objects, scope etc. of such a company are clearly defined under the provisions of the Act which brings it into existence. Usually, such companies are established to run the enterprises of social or national importance.
- Such companies are not to prepare M.O.A. and A.O.A., since they are governed by the act which has brought them into existence. Their working report is placed before the parliament or state legislature concerned.
- They are audited by the Auditor Journal and such companies are made with an objective of serving the people and not to earn profit.
- Such companies are the corporations created by the Government.

For Example : Reserve Bank of India, The life Insurance corporation of India, FCI, MPFC, MPSIDC etc.

(c) Registered company :

- A registered company is a company which is organized by getting it registered with the Registrar of companies under the provisions of companies act of the country concerned.
- The formation, working and continuity of such a company are governed by relevant provisions of the companies act.
- Most of the companies in the field of industry and commerce are registered companies.
- In India, such companies are registered under the companies act, 1956.

On the Basis of Liability

Limited liability Company : When the liability of the members of a company is limited to the extent of the nominal value of shares held by them, such companies are known as 'Limited liability companies.

- **Companies limited by Shares :** Where the liability of the members of a company is limited by the Memorandum of Association to the amount which remains unpaid on the shares. In case of winding up of the company the members cannot be asked to pay more than the amount unpaid on the shares held by them. A company limited by shares may be a public company or a private company.
- **Limited by Guarantee not having Share Capital :** In this type of companies the memorandum of Association limits the members' liability. It will be based on the

undertaking that has been given in MOA for their contribution in case of a winding up.

- **Limited by Guarantee having Share Capital :** In such cases, the liability would be based on the MOA towards the guaranteed amount and the remaining would be from the unpaid sums of the shares held by the person concerned.

Unlimited Company

- There is no limit on the liability of the members. The liability in such cases would extend to the whole amount of the company's debts and liabilities.
- Here the members cannot be directly sued by the creditors.
- When the company is wound up, the official liquidator will call upon the members to discharge the liability.
- The details of the number of members with which the company is registered and the amount of share capital has to be stated in the Articles of Association (AOA).

On the basis of Ownership

Government Company

- When 51% of the paid up share capital is held by the government.
- The share can be held by the central government or state government. Partly by central and partly by two or more governments.
- As the legal status of the company does not change by being a government company, there are no special privileges given to them.

Non-government Companies

If the subscription of the government in any company is less than 51% then it is said to be a non-government company.

Companies based on Domicile

National Companies

A company registered in the country to work and operate under the boundaries of the country.

Foreign Company

- A company incorporated outside India but having a place of business in India.
- If it does not have a place of business in India but only has agents in India it cannot be considered to be foreign company.

Multinational Company : A company having business in more than one country or in other words having its business in many countries is known as multinational company.

Example : Cipla, Pepsi etc.

On the basis of number of members:

Private Company

- A company which has a minimum of two persons. They have to subscribe to the MOA and AOA.
- It should be having a minimum paid up capital of 1 lakh or more as prescribed by the article.

- The maximum number of members to be Two hundred (it does not include members who are employed in the company, persons who were formerly employed).
- The rights to transfer the shares are restricted in the Private companies.
- Prohibits any invitation to the public to subscribe and therefore it cannot issue a prospectus inviting the public to subscribe for any shares in, or debentures of the company.
- It prohibits acceptance of deposits from persons other than its members, directors or their relatives.
- If two or more are holding one or more shares in a company jointly, they shall for the purpose of this definition, be treated as a single member.
- As there is no public accountability like a public company, there is no rigorous surveillance.

Exemption and Privileges of a Private Company

- It can have a minimum of two members.
- It can commence business immediately after obtaining certificate of incorporation.
- It need not issue prospectus or statement in lieu of prospectus.
- It can have a minimum of 2 directors.
- It need not hold statutory meeting or file statutory report with the ROC.

Public Company

A Public company means a company :

- Which is not a private company
- Which has a minimum paid-up capital of Rs 5 lakh or such higher paid-up capital, as may be prescribed
- Which is a private company and is a not a subsidiary of a company, which is private company.
- It includes any company which is a public company with a paid up capital of less than 5 lakh, then it has to enhance its paid up capital as per the statutory requirement

Conversion of Company

- The Act provides for conversion of public company into a private company and vice versa
- A private company is converted into a public company either by default or by choice in compliance with the statutory requirements.
- Once the action for conversion takes place then, a petition can be filed with the central government with the necessary documents for its decision on the matter of conversion.

One Person Company

OPC (One Person Company) means a company which has only one person as a member [section 2(62)]. It can have only one member and minimum one director. Directors in OPC cannot exceed beyond 15. This concept has been introduced in Companies Act, 2013.

On the basis of control

Holding Company : A company shall be deemed to be the holding company of another, if that other is its subsidiary.

Subsidiary Company : A company is said to be subsidiary of another if :

- The other company controls the composition of its Board of Directors.
- The other company holds more than half in nominal value of its equity share capital or more than half of total voting power of such company.
- It is a subsidiary of such a company which is itself subsidiary of any other company.

Associate Company : When a company has a substantial influence on the other company. But the company in which it has the substantial interest is not the subsidiary of that company.'

As per the reference to Section 2(6) from the amendment in 2017, "significant influence" means control of at least 20 per cents **of total voting power or control of or participation in** business decisions under an agreement.

Companies based on access to capital market

Based on capital market, the companies are of following types :

(A) Listed Companies

(B) Unlisted Companies

(A) Listed Companies : Listed company means a company which has any of its securities listed on any recognized stock exchange. [Sec. 2(52)]

Any listed company or the company which intends to list its securities on a recognized stock exchange should issue a prospectus to invite public for subscription of its shares and debentures. A listed company issues the Further Public Offer or FPO, while any company intends to be listed can make an Initial Public Offer or IPO.

A listed company is regulated by the provisions of companies act and the rules and regulations formed under it by the Ministry of Corporate Affairs or MCA. However, all such companies are also liable to comply with all the regulations notified by the Securities Exchange Board of India or SEBI more particularly with respect to the issue and transfer of securities and non-payment of dividend. [Sec. 24(1)]

All other matters concerning to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act shall be governed by the Central government, the Tribunal, or the Registrar, as the case may be. [Explanation to sec. 24(1)]

(C) Unlisted Companies : Any company whose securities are not listed on the recognized stock exchange. They arrange their capital funds from the members, relatives, and friends etc. These companies are not allowed to issue red herring prospectus for the subscription of public They are bound to comply the regulations of the Securities Exchange Board of India (SEBI) but they are liable to comply with regulations of the MCA.

Distinction Between Private and Public Company

The main point of distinction between private and public company are given in following table.

Basis of Distinction	Private Company	Public Company
1. Minimum members /subscribers	Except a OPC, a private company must have at least 2 members/subscribers. In OPC, there is only one subscriber to the memorandum.	A public company must have at least 7 members/subscribers to the memorandum.
2. Maximum members	Except a OPC, a private company must have maximum of 200 members.	There is no limit on maximum number of members in a public company.
3. Articles	Every private company has to prepare its articles of association. The Companies Act does not provide any model set of articles for private companies.	A public company may prepare its articles or adopt the model articles appended to the Act. For example, a public company limited by shares may either adopt Table F as its articles or prepare its own set of articles.
4. Provision for entrenchment of articles	A private company may amend the provisions for entrenchment as to alteration of its articles in its articles with the consent of all its members.	A public company may amend the provisions for entrenchment as to alteration of its articles in its articles by a special resolution.
5. Raising of capital	A private company can raise capital by means of private placement offer letter. It cannot invite public for subscription of its securities.	A public company can raise capital by issuing a prospectus as well as by issuing a private placement offer letter. Thus, it can invite public for subscription of its securities.

6. Minimum subscription	A private company can allot securities even without receiving minimum subscription for the issue. The provisions of minimum subscription do not apply to a private company.	A public company can allot securities to the public only after it has received the minimum subscription.
7. Independent director	The Board of director of private company need not have independent directors.	Every listed public company is required to have at least one-third of the total number of directors on its Board as independent directors.
8. Filling casual vacancy in directors' office	The Board of director of a private company cannot fill the casual vacancy in the office of a director.	The Board of directors of a public company may fill the casual vacancy in the office of a director.
9. Appointment of KMP	No private company is required to appoint any KMP except a company secretary if the paid-up share capital of the company is ₹ 5 crore or more.	Every listed company and every public company having paid up share capital of ₹ 10 crore or more is mandatorily required to appoint KMP.
10. Managerial remuneration	There is no maximum limit on managerial remuneration in a private company.	In a public company, total amount of managerial remuneration cannot exceed 11 percent of the net profits.
11. Quorum	Any 2 members personally present in the meeting can form quorum of a meeting of a private company.	In case of a public company, at least 5 members must be personally present to form quorum of the meeting if the number of members of a company does nto exceed 1,000. In case members are 1,001 to 5,000, the quorum of the meeting shall be 15 members. In case the members exceed 5,000, the quorum of the meeting shall be 30 members.
12. Report on AGM	No private company is required to prepare and file a report on AGM to the Registrar.	Every listed company has to prepare a report on its every AGM and file it to the Registrar.
13. Secretarial Audit Report	No private company is required to annex a secretarial audit report with its director's report.	Every listed company and every public company having a paid-up share capital of ₹ 250 crore or more shall annex a secretarial audit report with its directors' report.

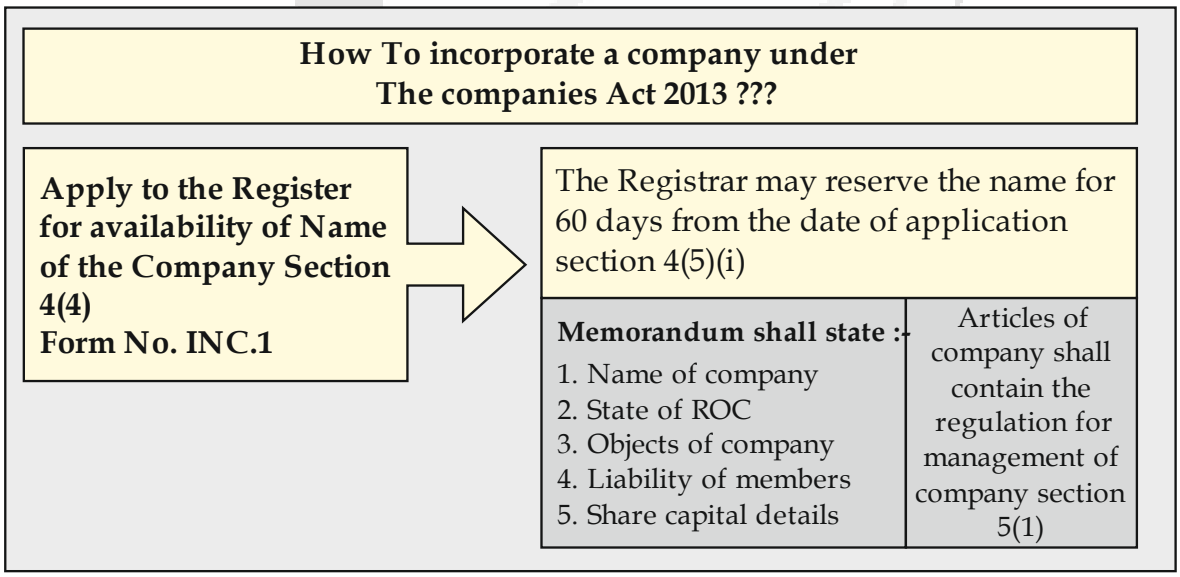
14. Small share holder's director	A private company need not have a director elected by small shareholders.	A listed public company shall have a director elected by small share holders from amongst themselves if not less than 1,000 small shareholders or one-tenth of the total number of such share-holders, whichever is lower, give a notice to this effect.
15. Financial assistance for purchase of its shares	An independent private company is not prohibited from giving financial assistance to any one for the purchase or subscription of its own shares.	A public company can give financial assistance for this purpose within the limit prescribed in the Act.

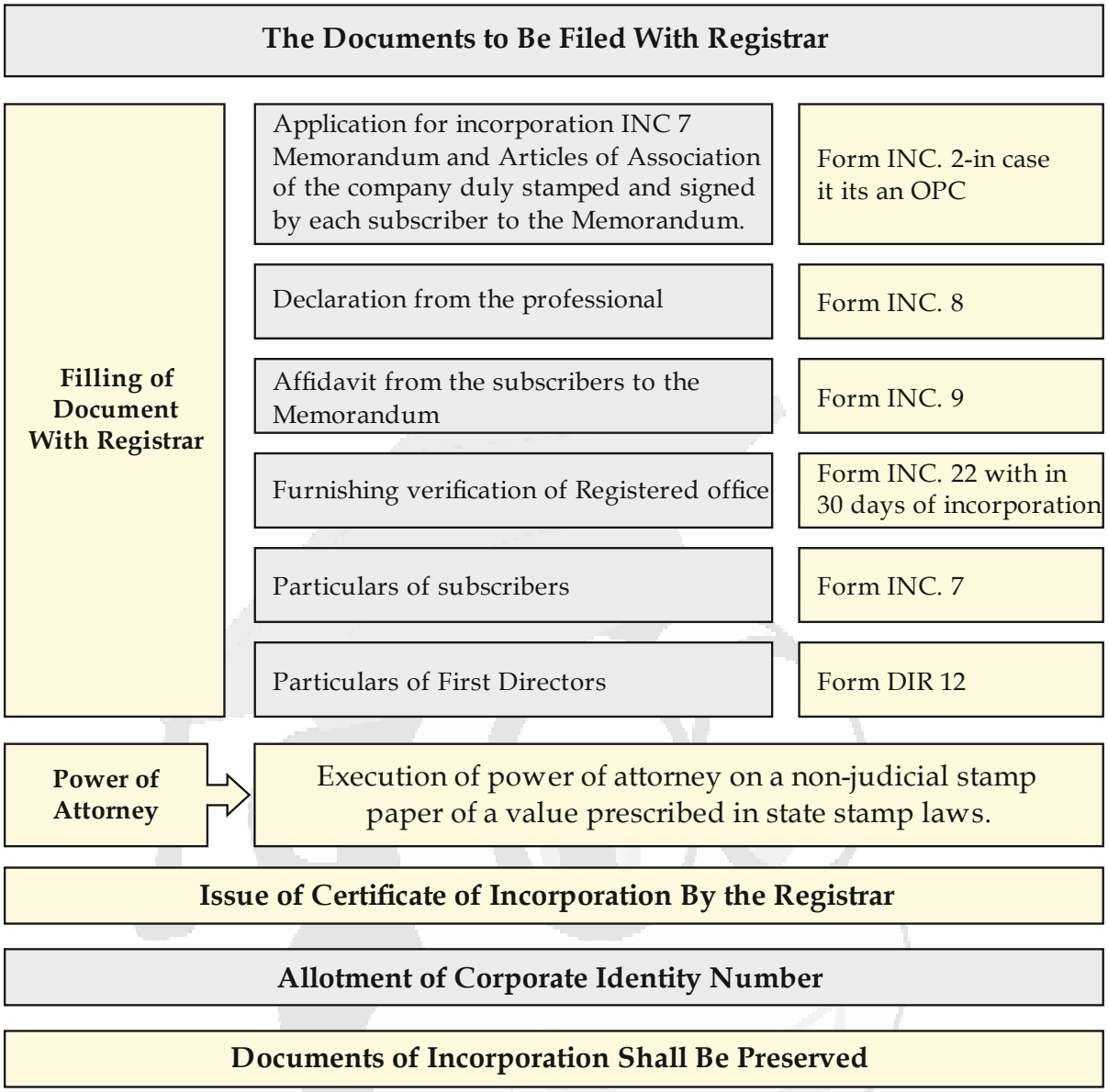
Formation of a Company

Registration and Incorporation

- Association of persons or partnership or more than 100 members can register to form a company under the Companies Act, 2013
- If they do not register, they can be considered to be illegal association. The contract entered into by this illegal association is void and cannot be validated. Its illegality will not affect its tax liability or its chargeability.
- The certification of incorporation is the conclusive evidence, that all the requirements for the registration have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorized to be registered and duly registered under this Act.

Incorporation of a Company





Formation or Incorporation of a Company : A Joint stock Company is said to be formed when it is incorporated or registered under the Companies Act, after completion of the formalities as required under the Act. Before a company is formed, a lot of preliminary work or works are to be performed. The formation of a company is a lengthy process.

Steps in formation of a company are as follows :

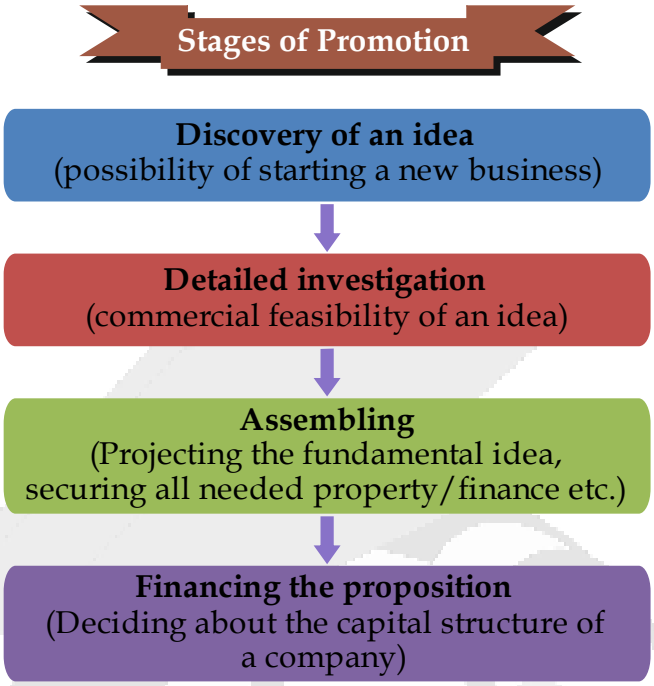
- Promotion
- Incorporation (Registration)
- Capital Subscription
- Commencement of Business

Note :

1. Only first two steps are required for the formation of a Private and a Public Ltd. company not having any shares.
2. All the four stages are required to be fulfilled by a public ltd. company having a share capital.

Promotion : It is the first stage in the formation of a company. The term 'promotion' refers to the aggregate of activities designed to bring into being an enterprise to operate a business.

According to **Guthmann** and **Dougall** "Promotion starts with the conception of the idea from which the business is to evolve and continues down to the point at which the business is full, ready to begin operations in a going concern."



Promoters

- The persons who conceive an idea of a company decide and do the necessary work for formation of a company are called the promoters of the company.
- The Promoters are the persons who decide on the formation of the company.
- The promoters of a company stand undoubtedly in a fiduciary position though they are not the agent or a trustee of a company. They are the ones "who create and mould the company".
- They may have to enter into pre-incorporation contracts, which can be validated after the incorporation of the company for obtaining certificate of incorporation.
- They can be remunerated for their services, but they have to enter into a contract before the incorporation of the company through a pre incorporation of the company
- They will usually act as nominees or as the first directors of the company
- They enter into contracts after the incorporation and before the commencement of business.

But they need not compulsorily participate in the formation of the company. Sometimes, a few persons may only act as professionals who help the promoters on behalf of the company like the solicitor, chartered accountant etc. and get paid for their services.

The promoters in most of the cases decide as to what is the type of a company to be formed.

In India promoters generally secure the management of the company that is formed and have a controlling interest in the company's management.

They cannot make profit at the expense of the company, which they have promoted without the knowledge and consent of the company. In case they do so, they may be compelled to account for it. They cannot sell their property to the company at a profit unless all the material facts are disclosed at the independent board of directors or the shareholders of the company.

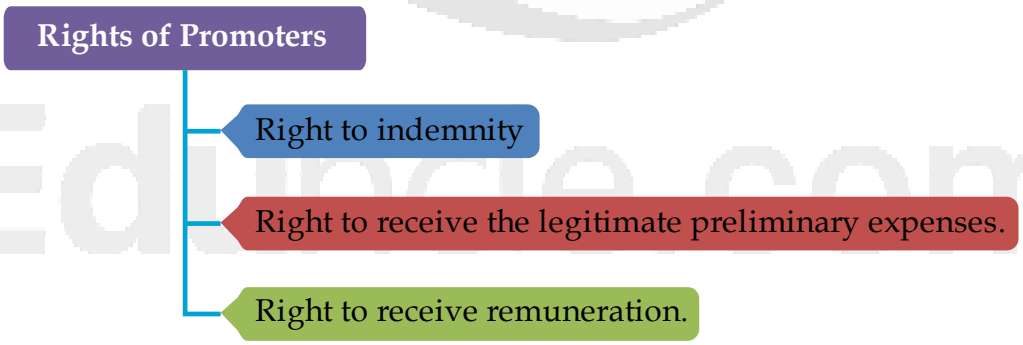
If they do so, the company may repudiate the contract of sale or confirm the sale after recovering the profit made by the promoter

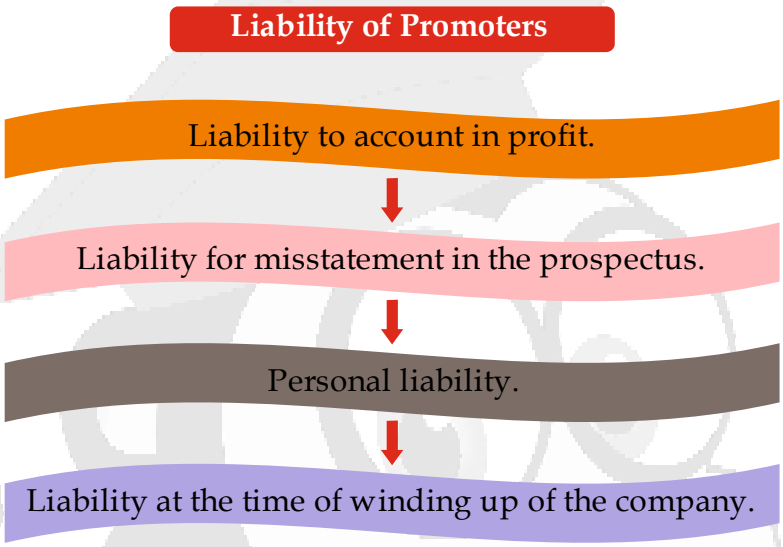
Functions of The Promoters

- To conceive an idea of forming a company and explore its possibilities.
- To conduct the necessary negotiation for the development of the business.
- To collect the requisite number of persons who can sign the MOA and AOA of the company and also to act as the first directors of the company.
- To decide about the-Name and location of its registered office, the amount and form of its share capital, the brokers, or underwriters for capital issue, if necessary, the bankers, auditors, and legal advisers.
- To get the MOA and AOA drafted and printed.
- To enter into preliminary contracts with the vendors, underwriters, etc.
- To decide for the preparation of prospectus, its filing, advertisement, and issue of capital.
- To arrange for the registration of company and obtain the certificate of incorporation. To defray preliminary expenses.
- To arrange for the minimum subscription.

Legal Position of a Promoter

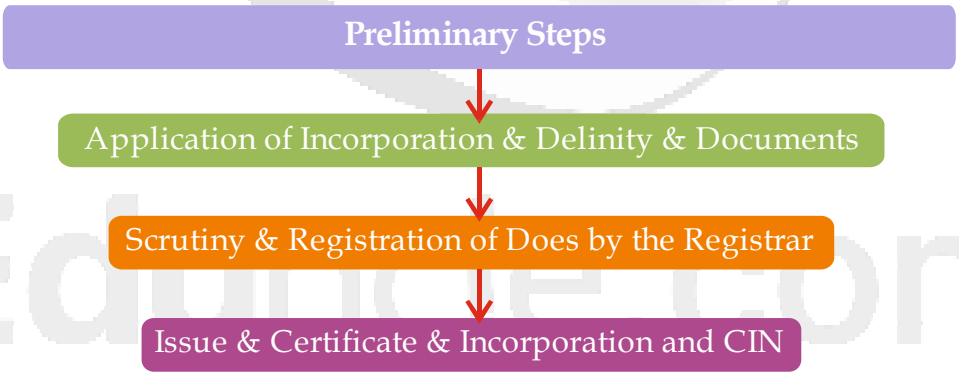
- The promoter is neither a trustee nor an agent of the company because there is no company yet in existence. The correct way to describe his legal position is that he stands in a fiduciary position towards the company about to be formed.
- They have in their hands the creation and moulding of the company.
- They have the power of defining how and when and in what shape and under what supervision, it shall start into existence and begin to act a trading corporation.





Registrations and Incorporation of Company

It is the second stage of formation of a company. A company comes into existence only after its registration and issue of certificate of incorporation to it. The registration and incorporation of a company usually involves the following steps :



1. Deciding the Kind of Company : A promoter is required to decide the kind of company he wants to get registered. Under the Companies Act, a public as well as a private company may be registered. A promoter may also register a One Person Company (OPC).

2. Deciding the Place of Registered Office : A promoter must decide the place of the registered office of the company. If exact place cannot be decided, he will have to decide at least the State in which registered office of the company will be situated. The promoter shall decide the address of the company **for correspondence till its registered office is established.**

3. Obtaining DIN by the Prospective Directors : Every director or a person intending to be a director of company is mandatorily required to obtain his Director's Identification Number or DIN. The DIN is a permanent and unique number.

4. Obtaining Digital Signature by Promoters/Prospective Directors etc.: Now companies are required to e-file many documents for the purpose of registration of a company which cannot be signed manually.

A digital signature is the electronic signature done by means of electronic procedure.

5. Selecting and Reserving Name of the Company : A promoter is required to select a name for his proposed company. Then, an application for reservation of a name shall be made in Form No. INC-1 along with the prescribed fee to the Registrar of the **Central Registration Centre or CRC.**

The registrar of the CRC may upon receipt of an application for reservation of a name of a proposed company, reserve the name for **a period of 20 days from the date of approval or such other period as may be prescribed.**

6. Drafting Memorandum : Then, the promoter arranges to draft the memorandum of the proposed company. Tables A, B, C, D and E of the Schedule 1 contain formats of memorandum for different types of companies.

7. Drafting Articles : The other important document of the company is the articles of association. It contains rules and regulations for internal management of the company. The articles shall also contain such matters, as may be prescribed. Additional matters may be included in the articles if considered necessary.

8. Vetting of the Drafts : It is desirable to get the drafts of memorandum and articles vetted by the Registrar. This helps avoid mistakes and unnecessary delay in registration of the company.

9. Printing of the Documents : The promoters must get the memorandum and articles printed as required by law. Alternatively, they may be computer laser printed.

10. Stamping : Both the documents must be stamped in accordance with the Stamp Laws applicable to them.

11. Dating : Both the documents must be dated. The date should be any date after the date of stamping of them and not before that date.

12. Obtaining Signature of Subscribers : In case of a public company, there must be at least seven subscribers and two in case of a private company. However, in case of OPC, there shall be one subscriber. The memorandum should be signed by each subscriber.

It is not necessary that the subscribers should personally sign the memorandum. An agent authorised by power of attorney can also sign on behalf of all the subscribers.

13. Obtaining Consent of Nominee in Case of OPC : In the case of OPC, the name of a person (nominee) who, in the event of death of or incapacity to contract of the subscriber, shall become the member of the company, should also be included in the memorandum with his consent. The promoter should, therefore, obtain the consent in writing of that person in Form No. INC-3.

14. Obtaining Declaration as to Compliance with Legal Requirements : A promoter also has to obtain a declaration in Form No. INC-8. It shall declare that all the requirements of this Act and the rules made thereunder in respect of registration of matters precedent or incident thereto have been complied with.

15. Obtaining a Declaration from Subscribers and Persons Named as First Directors : A promoter shall also obtain a declaration in Form No. INC-9 from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles.

16. Obtaining Particulars of Subscribers : The promoter shall obtain the particulars of subscribers such as name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum. It shall also include specimen signature and latest photograph in Form No. INC-10.

17. Obtaining Particulars of First Directors : The promoter shall also obtain the particulars of the persons mentioned in the articles as the first directors of the company. The particulars shall include their names with surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed. [Sec. 7(1)(f) and Rule INC-17]

18. Obtaining Particulars of Interests of First Directors : Promoters shall also obtain the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate in such form and manner as may be prescribed. [Sec. 7(1) (g) and Rule INC-17]

19. Obtaining Consent of Directors : The promoter must get written consent of the persons who agree to act as first directors of the company in such form and manner as may be prescribed. [Sec. 7(1) (g) and Rule INC-17]

20. Obtaining Approval of the Sectoral Regulators : Sometimes, a company pursues such objects that require registration or approval from sectoral regulators such as RBI and SEBI.

21. Drafting Other Contracts : The promoter also gets the other contracts drafted which he wants to include in the terms of incorporation of the company.

The application shall be accompanied by **the following documents and information :**

1. Notice of Address for Communication
2. Memorandum of the Company
3. Approval of Sectoral Regulators
4. Articles of the Company
5. Declaration as to Compliance with legal Requirements
6. Declaration from Subscribers and Persons Named as First Directors
7. Particulars of Every Subscribers
8. Particulars of First Directors
9. Particulars of Interest of Directors
10. Consent to Act as Directors
11. Copy of the letter Confirming Reservation of the Name
12. Power of Attorney by Subscribers
13. Power of Attorney to Make Corrections
13. Payment of Fees

All these documents should be filed with the Registrar of the CRC **within 20 days or other prescribed period from the date of confirmation of reservation of name of the company** since the reservation of name is **valid for that period. [Sec. 4(5) and amended in 2017]**

Scrutiny

After receiving application and delivery of documents for incorporation, the Registrar of the CRC shall scrutinize the documents.

If there is any minor defect in any document, the Registrar of the CRC may required for its rectification by the authorised person. But if there is a **material defect,** he may return all the documents for rectification. He may refuse to register a company on only lawful grounds. But if he refuses to register on a ground which is not legitimate, **he may be compelled to register.**

Issue Certificate of Incorporation and CIN

On registration of all the documents and information, the Registrar of the CRC shall issue a certificate of incorporation in the Form No. INC-11. It shall state that the proposed company is incorporated under this Act. The certificate of incorporations shall mention permanent account number of the company, where it is used by the Income Tax Department. **[Sec 7(2) and Rule INC-18 as amended in January, 2017]**

Certificate of Incorporation : A Conclusive Proof of Date of Incorporation :

The certification of incorporation brings the company into existence as a distinct legal entity. It is a proof of registration and existence of a company as a legal person. The date of incorporation mentioned in the certificate of incorporation is deemed to be the date of incorporation of the company. [Sec. 9] A company comes into existence from the **earliest moment of the day** of incorporation stated in the certificate.

Where no such date is stated, the date of the certificate is the conclusive evidence of **date of incorporation** even if **it is wrong.**

Once the certification of incorporation is issued, **the validity of registration cannot be impeached or challenged.** This is so even if all the signatures of the subscribers are forged or all the signatories are minors. **Lord Cairns** observed that **certificate** of incorporation is not merely a *prime facie* answer but a conclusive evidence to such objections . . . . **Once the certificate of incorporation is given nothing is to be inquired into as to the regularity of the prior proceedings.**

It is pertinent to note that the certificate is **not a conclusive evidence of validity of the objects.** Even if the **objects are illegal,** the certificate cannot be cancelled. Only remedy to put an end to it is to start proceedings for winding up. [T.V. Krishna v. Andhra Prabha (Pvt.) Ltd.,

Capital Subscription

A public company is allowed to raise their funds from the public by issuing shaves and debentures. But before that it has to issue a prospectus for the public to subscribe to the capital of the company and undergo various other formalities. The steps required for raising the money from the public are:

(i) SEBI Approval : The Securities and Exchange Board of India which is our country's regulatory authority has published guidelines for the disclosure of information and investor protection. A company which has invited for funds from the general public must make sufficient disclosure of all relevant information and must not conceal any material information. This is needed for the protection of the investors.

Hence before raising funds from the public we need get the approval from SEBI.

(ii) Filing of Prospectus : A copy of the prospectus or statement in lieu of prospectus has to be filed with the Registrar of Companies. A prospectus is 'any document described or issued as a prospectus including any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares or debentures of, a body corporate'. So it can be said that it is an invitation to the public to apply for shares or debentures of the company or to make deposits in the company. Investors set their minds about investment in a company solely on the basis of the information present in this document. Hence, there is not suppose to be a misstatement in the prospectus and all important information must be fully disclosed.

(iii) Appointment of Bankers, Brokers, Underwriters : Raising funds from the public is a very difficult task. The bankers of the company should receive the application money. The brokers distribute the shaves to the public and encourage them to buy them. If the company is doubtful of a good public response then it may also appoint underwriters to the issue. Undewriters buy these shares if they are not bought buy the public by receiving a commission for underwriting of this issue.

(iv) Minimum Subscription : For the companies to commence business with adequate resources, it has been presented that the company must receive applications for a certain minimum number of shaves before going ahead with the allotment of shares. According to the Companies Act, it is known as the 'minimum subscription'. If applications received for the shares are for an amount less than 90 per cent of the issue size, the allotment is not allowed to be made and the application money received is suppose to be returned to the applicants.

(v) Application to Stock Exchange : Atleast one stock exchange is sent an application for the permission to deal its shares and debentures. The allotment shall become void and all money received from the applicants will have to be returned to them within eight days is such permission is not allotted within 10 weeks of the closure of the subscription.

(vi) Allotment of Shares : If the number of shares allotted becomes less than the number applied for, or where no shaves are allotted to the applicant, the excess application money, if any, has to be returned to applicants or adjusted towards allotment money due from them. A return of allotment, within 30 days, signed by the director or secretary is suppose to be submitted. The public may not be invited to allot the shares and debentures by a public company but it can raise funds through friends, relatives or some private arrangements as done by a private company.

Hence there is no need to issue a prospectus and a 'Statement in Lieu of Prospectus' is filed with the Registrar at least 3 days before making the allotment.

Application for Availability of Name

There is a requirement of selecting 6 names in the preference order. Numerous provisions, clarifications, circulars, and rules made by the Ministry of Corporate Affairs, etc. should be considered. If key word is required, significance of each key word should be given in the e-Form 1A.

(a) Applying for determining the availability of the selected name : The promoters are required to make an application to the concerned Registrar of Companies to be submitted electronically to the Ministry of Corporate Affairs on the portal of MCA. An application shall be in e-Form INC-1 as per sec 4(4) read with Rule 9 of Companies (Incorporation) Rules, 2014,

duly digitally signed by any one promoter or managing director or director or manager or secretary of the company along with the required fee for ascertaining whether the selected name is available for adoption by the promoters of the proposed company. MCA has prescribed certain rules for name availability, so it is advisable to check guidelines for the same before applying for name.

(b) Approval of the name : After receiving completed application in e-Form INC-1, the Registrar shall intimate whether the proposed name is available for adoption or not. As per section 4(5), maximum time for which name will be available has been prescribed in the law itself under section 4(5). The name will be valid for a period of 60 Days from the date on which the application for Reservation was made.

The applicant cannot start business or enter into any agreement, contract, etc. in the name of the proposed company until and unless a certificate of registration is issued by the registrar of companies as per the provisions of the Companies Act, 2013 and the rules made there under.

Exercise : 2 Review Your Progress

1. *State whether the following statement is "True" or "False"*
A promoter has no legal right to claim promotional expenses for his/her services unless there is a valid contract.
(A) True *(B) False*

2. *State whether the following statement is "True" or "False"*
The person who takes lesser role in the formation of company cannot be a promoter.
(A) True *(B) False*

3. *Choose the correct answer*
What is the maximum allowable period for the adoption of the name by the promoters when the registrar informs the promoters of the company that the name is available for use?
(A) 30 days from the date the name is allowed
(B) 60 days from the date the name is allowed
(C) 90 days from the date the name is allowed
(D) 180 days from the date the name is allowed

Memorandum of Association (MOA)

The company to be registered under the companies' act is required to have 2 documents stamped, registered, and filed with the registrar of companies, they may be MoA and AoA.

- MoA has been defined as - MoA of a company as originally frame or as altered from time to time in pursuance of any previous company's law or of this act.
- MoA is the main document which contains rules regarding its constitution, objective, activities, and area of operation of the company. This document is mainly made out for the outside world or in other words we can say that MoA is a mirror of a company in which an outsider can look its image.
- It also defines the extent and powers of the company.

- It is the charter of the company
- It contains the fundamental conditions upon which the company can be incorporated
- It contains the objects of the company's formation
- The company has to act within objects specified in the MOA
- It defines as well as confines the powers of the company
- Anything done beyond the objects specified in the MOA will be ultra vires. Their transactions will be null and void
- The outsider has to transact looking into the MOA

Requisites of the MOA

- It should be printed
- Divided into paragraph and numbers consecutively
- Signed by at least seven persons or two in case of public and private company, respectively.
- The signature should be in the presence of a witness, who will have to attest the signature
- Members have to take shares and write the number of shares taken with full address

The MOA of the Limited Company

- The name of the company with 'limited' as the last word
- The name of the state where the registered office of the company is to be situated
- The objects of the company stating the 'Main objects' and the 'other objects'
- The declaration about the liability of the members is limited (limited by shares or guarantee)
- The amount of the authorized share capital divided into shares of fixed amounts.

The Compulsory Clauses in MOA

Memorandum of Association [Section 4 Read With Schedule 1]

Name Clause

Application for name approval to be made in INC 1 Name of the company indicate private public No use to of name that will constitute an offence No undesirable name specified in Rule 8 of Companies (Incorporation) Rules NO identical name that resembles the name of an existing company.

Situation Clause

This specifies the State which registered office situated companies have registered office within 15 days of incorporation Registrar to be intimated about the details of registered office within 30 days of incorporation or 15 days of change if any as the case may be in Form INC. 22

Object Clause

Memorandum to State the object of the company proposed be incorporated The bifurcation main, ancillary and other objects as required under Companies Act 1956 has been dispensed within companies Act 2013.

Liability Clause

This States that liability of the members is limited unlimited. In case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them (including premium if any) as against Companies Act 1956 where in it was limited to the amount unpaid on face value of the share.

Capital Clause

This must state the amount of capital with which the company registered The shares into which capital is divided must be of fixed amount and the no. of shares which the subscribers to the memorandum agree to to subscribers to shall not be less than The capital is variously described as “Nominal", "Authorised"

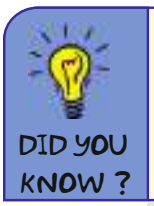
Subscription Clause (Stated in Schedule 1)

Subscribers agree subscribe the prescribed no. of shares stated against their name in the memorandum. The statutory requirements regarding subscription of memorandum are that : Each subscriber must write opposite

- **The Name Clause :** A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is not undesirable.

- **The Registered Office Clause :** The name of the state in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. Within 15 days of its incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent. The company must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed. (The registered office can be changed with the permission of the ROC)
- **The Object Clause :** Main object, ancillary object and the other objects of the company are clearly specified (Ashbury Railway Carriage Co V. Riche). The applicable doctrine here is the "Doctrine of Ultra Vires" beyond the powers of the company (opposed to Intra Vires).

  It is ultra vires for a company to act beyond the limits of its memorandum. Any attempted departure will be invalid and cannot be validated even if assented by all the shareholders of the company. Ultra vires means an act or transaction of a company, which though it may not be illegal, is beyond the company's powers by reason of not being within the objects of the memorandum of association.



The company shall furnish to the Registrar of Companies, the verification of its registered office within 30 days of incorporation in Form INC 22.

- **The Liability Clause :** What is the liability of its members limited by shares or guarantee or unlimited, there can be alteration in the liability clause
- **The Capital Clause :** The amount of the nominal capital of the company, number of shares in which it is to be divided… alteration of the capital clause etc.
- **The Association or Subscription Clause :** Where the subscribers to the MOA declare that they respectively agree to take the number of the shares in the capital. It has to have the following :
  (a) They have to sign in the presence of two witnesses, who attest the signatures,
  (b) The subscriber to take at least one share.
  (c) After the name, the subscriber has to write the number of shares taken.

"Doctrine of Ultra Vires"

- The powers exercisable by the company are to be confined to the objects specified in the MOA.
- So, it is better to define and include the provisions regarding the acquiring of business, sharing of profits, promoting company and other financial, gifts, political party funds etc.
- If the company acts beyond the powers or the objects of the company that is specified in the MOA, the acts are considered to be of ultra vires. Even if it is ratified by all the members, the action is considered to be ineffective.
- Even the charitable contributions have to be based on the object clause. *(A Lakshmana Swami Mudaliar Vs. LIC of India)*

Shareholder's right in respect of ultra vires acts

The consequences of the ultra vires transactions are as follows :

(a) Void ab initio

(a) Injunction

(b) Directors' personal liability.

(c) If a property has been purchased and it is an ultra vires act, the company can have a right over that property.

(d) The doctrine to be used exclusively for the companies' interest.

(e) But the others cannot use this doctrine as a tool to attack the company

Exercise : 3 Review Your Progress

1. *Can Shareholders ratify an act which is ultra vires the MoA?*

2. *State whether the following statement is "True" or "False"*
Memorandum determines the scope of operations of a company beyond which its' actions cannot go.
(A) True *(B) False*

3. *If a transaction is outside the capacity of the company, it is ultra vires.*
(A) True *(B) False*

Articles of Association (AOA)

The articles of the association are subordinate to the MoA. It is a bundle of rules and regulations made for the internal management of a company. They help out in carrying out the objects set out in the memorandum. The functions of articles are to define the duties, rights, and powers of board of directors and the members of the company. It also provides the mode and form in which the affairs of the company are to be carried on and also the manner in which the internal management of the company is to be carried out.

A company can either prepare its own article or can adopt table "A of the companies act having a model AoA.

The following companies must prepare their own articles and filed along with MoA are: Pvt. Ltd. Co., Companies limited by guarantee and unlimited companies.

- It is the company's bye- laws or rules to govern the management of the company for its internal affairs and the conduct of its business.
- AOA defines the powers of its officers and also establishes a contract between the company and the members and between the members inter se.
- It can be originally framed and altered by the company under previous or existing provisions of law.
- AOA plays a subsidiary part to the MOA
- Anything done beyond the AOA will be considered to be irregular and may be ratified by the shareholders.

- The content of the AOA may differ from company to company as the act has not specified any specific provisions.
- Flexibility is allowed to the persons who form the company to adopt the AOA within the requirements of the company law.
- The AOA will have to be conversant with the MOA, as they are contemporaneous documents to be read together.
- Any ambiguity and uncertainty in one of them may be removed by reference to the other.

Contents of the AOA may be as follows :

- Share capital
- Lien on shares
- Calls on shares
- Transfer and transmission of shares
- Forfeiture of the shares
- Surrender of the shares
- General meetings
- Alternation of the capital
- Directors etc.
- Account and audit
- Borrowing powers
- Winding up
- Adoption of the preliminary contracts etc.

Doctrine of Constructive Notice

The memorandum and articles, when registered with the Registrar, become public documents. They are open and available for inspection to all in the Registrar's Office. Therefore, every person who contemplates to deal with the company can easily inspect and read these documents. He can ascertain whether or not his deal is within the powers of the company and its directors. This is known as 'doctrine of constructive notice.

The 'doctrine of constructive notice' states that every person dealing with a company is deemed to have notice of the contents of memorandum and articles of the company.

Therefore, if a person enters into a contract which is beyond the powers of the company or its directors, he cannot acquire any rights under the contract against the company.

Effects

The doctrine of constructive notice involves the following things or has following effects :

(i) Every person dealing with the company has a **notice of the contents** of the memorandum and articles of association of the company whether the person has read them or not.

(ii) He has **a notice of the powers of the company** as well of its directors or officers. If a person enters into a contract which is beyond the powers of the company or its directors, he cannot enforce it.

(iii) The person has a **notice of the resolutions passed and registered** with the Registrar by the company.

(iv) The person has a **notice of the charges registered** with the Registrar.

(v) The person has a **constructive notice of all other documents** which are required by **the Act to the registered and are registered with the Registrar.**

Doctrine of Indoor Management

The 'doctrine of indoor management' is an important exception or limitation on the 'doctrine of constructive notice'. Stated in other words, one is just opposed to another. In brief, the 'doctrine of constructive notice' protects the company against the outsiders whereas the 'doctrine of indoor management' protects outsiders against the company, who act in good faith.

The 'doctrine of indoor management' lays down that the persons dealing with the company are bound to see that the proposed deals are in accordance with the provisions of the memorandum and articles of the company. But they are not bound to enquire into the regularity of internal procedure of the company. They are entitled to assume that everything has been done in accordance with the procedure prescribed by the company's articles. If the proposed deal is within the scope of these two documents, the company will be bound by the deal and the rights of the dealing parties will not be adversely affected in any way by the irregularity of the internal procedures. This rule was laid down in Royal British Bank v. Turquand. Therefore, this rule is also known as the **'Turquand rule'.**

Significance of Doctrine

1. **This rule projects the outsiders.**
2. **Helps smooth and easy working** of the business world without compelling parties to investigate into the day-to-day working procedures of a company.
3. In the absence of this rule, a lot of **persons may be unwilling to deal with companies.**

Exceptions :

1. Knowledge of Irregularity to third party
2. The person dealing is a part of internal management
3. Suspicion of irregularity or acts outside the scope of apparent authority
4. Forgery
5. Negligence
6. No knowledge of articles
7. Where inquiry is essential
8. Where the contract is inconsistent with the general business of the company
9. Ultra vires acts
10. Contracts/acts prohibited by the Act : Where a person enters into a contract with a company which is prohibited by the Companies Act, he does not get protection under this doctrine.

Doctrine of Constructive notice and Indoor Management
Persons dealing with the company have to satisfy themselves. But need not know the internal irregularity. Royal British Bank Vs. Turquand (Turquand Rule) Directors issuing a bond.
The doctrine of Constructive notice can be invoked by the company to operate against the persons dealing with the company.
The outsider cannot embark, but only can acquaint upon the MOA and AOA. (Official Liquidator, Manasuba & Co Pvt Ltd Vs. Commissioner of Police)

Raising of Capital from Public

- The companies can raise money by offering securities for sale to the public.
- They can invite the public to buy shares, which is known as public issue.
- For this purpose, the company may issue a prospectus, which may include a notice circular, advertisement or other documents which are issued to invite public deposits.

Prospectus

Introduction : After having obtained the certificate of incorporation, the promoters of a public company will have to take steps to raise the necessary capital for the company. A public company may invite the public to subscribe to its shares or debentures. For this purpose, a document known as Prospectus has to be issued.

Public company which can manage its own capital privately need not to issue prospectus. But in such a case, a statement in lieu of prospectus must be filed with the Registrar.

A private company is not allowed to issue a prospectus since it cannot invite general public to subscribe to its shares or debentures.

Meaning of Prospectus : A document containing detailed information about the company and an invitation to the public for subscribing to the share capital and debentures issued is called prospectus.

Definition of Prospectus : According to section 2(36) of the companies act-" Prospectus means any document described or issued as a prospects and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscriptions or purchase of any shares in or debentures of a body corporate".

Objects of Prospectus : To bring to the notice of the public that a new company has been formed.

To preserve an authentic record of the terms and allotment on which the public have been invited to buy its shares or debentures.

To secure that the directors of the company accept responsibility of the statement in the prospectus.

- It is an invitation issued to the public to purchase or subscribe shares or debentures of the company.
- Every prospectus must be dated. The date of publication and the date of issue must be specifically stated in the prospectus.
- The golden rule of the prospectus is that every detail has to be given in strict and scrupulous accuracy. The material facts given in the prospectus are presumed to be true. (New Brunswick and Canada Railway Land & Co. vs. Muggerridge).

Contents of The Prospectus

- General information
- Capital structure
- Terms of present issue
- Management and projects
- Management and perception of risk factor

Nature of Prospectus: A document is not prospectus unless it is an invitation to the public to subscribe for shares in, or debentures of a company.

- It is compulsory to register the prospectus with the Registrar.
- Civil Liability for Misstatements in case of any untrue statement in the prospectus.
- The liability will be on the director of the company, whose name was written during the time of issue.
- The persons who have authorized their names to be theirs in the prospectus to be named as directors.
- Every person including the person who is an expert and has authorized his name to be issued with the prospectus.

Remedies for Misstatements in The Prospectus

- Relying on the prospectus if any person buys shares, the person may rescind the contract (only when there is misrepresentation relating to the material facts.)
- The rescission has to be done within a reasonable time.
- Claim damages- it can be claimed from the directors, promoters or other persons who has authorized their name to be written during the issue of the prospectus

Requirement as to Prospectus : Issue of prospectus, in order to be valid, must satisfy the following requirements:

- Issued after the incorporation.
- Prospectus must be dated.
- Prospectus must be registered.
- Expert to be unconnected with the formation of the company.
- Consent of expert to be obtained.
- Terms of the contract not to be varied.
- Every application form to be accompanied with a copy of prospectus.
- Consequences of applying for shares in fictitious names to be prominently displayed.
- Contents as per schedule II.

Types of Prospectus

Abridged Prospectus	Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf.
Deemed Prospectus	Sometimes, a company allots or agrees to allot any securities of the company to another or firm with a view to all or any of those securities being offered for sale to the public. In such a case, any document by which such offer for sale is made by that another company or firm shall be and deemed to be a prospectus issued by the company.
Offer for Sale of Shares by Members	Sometimes, certain members of a company propose, (in consultation with the Board of Directors) to offer, whole or part of their holding of share in the company to the public. They may do so in accordance with such procedure as may be prescribed. [Sec. 28(1)]
Shelf Prospectus	Shelf prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.
Red Herring Prospectus	**Red herring prospectus** means a prospectus which does not have complete particulars on the quantum or price of the securities offered and the quantum of securities included therein.
'Information Memorandum'	It means a process, which is undertaken prior to the filing of prospectus.
Even an Advertisement	That the shares are available is considered to be prospectus

Share

Share is defined as "an interest having a money value and made up of diverse rights specified under the articles of association".

- A share is the interest of a shareholder in a definite portion of the capital.
- A share is the interest of a shareholder, measured by a sum of money, for the purpose, of liability in the first place and of interest in the second.
- A share is a personal estate capable of being transferred in the manner laid down by in the articles of the company.
- It is incorporeal in nature and it consists merely of a bundle of rights and obligations.
- Every share issued by a company must be numbered so that one share may be distinguished from another share.
- A certificate of shares issued by a company under its common seal specified the shares held by any member.

Stock

When shares are fully paid-up, they may be converted into stock.

- Stock is simply a set of shares put together in a bundle.
- It is the aggregate of fully paid-up shares legally consolidated.
- The aggregate can be split up into fractions of any amount without regard to the original nominal number of shares.

Conversion of Shares into Stock : A company may, if so, authorized by its articles, convert all or any of its fully paid-up shares into stock, and recovered that stock into fully paid-up shares of any denomination.

"So, every stock is a share while every share may not be a stock".

Method of conversion of shares into stock is as follows :

- To pass a resolution in the general meeting of shareholders.
- Information of conversion to the registrar.
- To make alteration in the Articles.
- To close transfer books and to inform the shareholders.
- To issue stock certificate and prepare register.
- Transfer of stock.

Share Capital

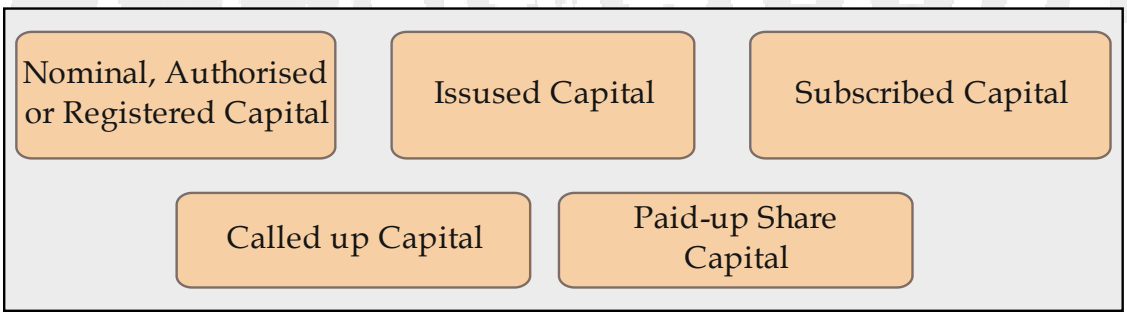
Share capital consists of all the funds raised by a company in exchange for shares.

- The term capital usually means a particular amount of money with which a business is started.
- Capital, in fact, represents the assets with which the undertaking is carried on.
- The sum total of nominal value of shares of a company is known as its shares capital.
- Capital to be stated in the MOA and AoA of the company.
- Share capital means the capital raised by the company by issue of shares.
- A share is a share in the share capital of the company including the stock.
- Share gives a right to participate in the profits of the company, or a share in the assets when the company is going to be wound up.

Other Features of a Share

- A share is not a negotiable instrument, but it is a movable property.
- It is also considered to be goods under the Sale of Goods Act, 1930.
- The company has to issue the share certificate.
- It is subject to stamp duty.
- The 'Call' on Shares is a demand made for payment of price of the shares allotted to the members by the Board of Directors in accordance with the Articles of Association.
- The call may be for full amount or part of it.

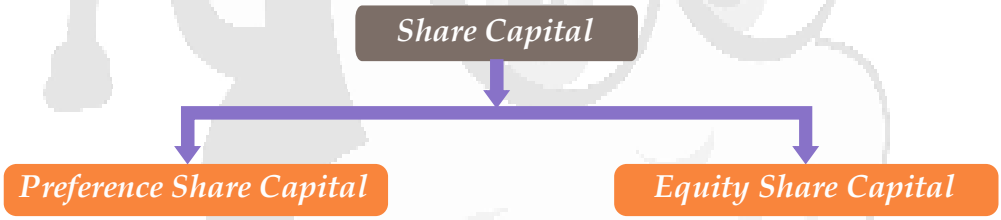
Types of Capital



S. NO.	Type Of Capital	Section under Companies Act, 2013	Definition
(a)	Nominal, Authorised or Registered Capital	2(8)	Such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.
(b)	Issued capital	2(50)	Such capital as the company issues from time to time for subscription. It is that part of the authorised or nominal capital which the company issues for the time being for public subscription and allotment. This is computed at the face or nominal value.
(c)	Subscribed capital	2(86)	Such part Of the capital which is for the time being subscribed by the members of a campany. It is that of the issued capital at face value which has been subscribed for or taken up by the subscribers of shares in the company. It is clear that the entire issued capital may or may not be subscribed.
(d)	Called-up Capital	2(15)	Such part of the capital, which has been called for payment. It is that portion of the subscribed capital which has been called up or demanded on the shares by the company.
(e)	Paid-up Share Capital	2(64)	Such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.
(f)	Equity Preference Share Capital (Discussed later)	Explanation under Section 43	**"equity share capital",** with reference to any company limited by shares, means all share capital which is not preference share capital; **"preference share capital",** with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to— **(a)** payment of divdend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and **(b)** repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up. Whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

1. **Registered, Authorized or Nominal Capital :** (capital mentioned in the MOA)
2. **Issued Capital :** (A part of the authorized capital which is offered to public for subscription in the form of shares)
3. **Unissued Capital :** (Balance of the nominal capital remaining to be issued)
4. **Subscribed Capital :** (It is the part of the issued capital for which applications are received from the public)
5. **Called up Capital :** (It is that part of the subscribed capital which has been called up by the company)
6. **Uncalled up Capital :** (It is the uncalled portion of the allotted capital and represent contingent liability of the shareholder on the shares)
7. **Paid up Capital :** (It is the part of the called-up capital against which payment has been received from the members on their respective shares)
8. **Reserve Capital :** (The amount which is not called by the company except in the event of the company being wound up.)
9. **Fixed Capital :** (The fixed capital of a company is what the company retains in the shape of fixed assets such as land and building, plant, machinery, furniture, etc.)
10. **Circulating Capital :** (The circulating capital is a part of subscribed capital which is circulated in business in the form of using goods or other assets such as books debts, bill receivable, cash, bank balance etc.)

Kinds of Shares



Preference Shares

Preference share capital is the part of the capital of the company which :

- Carries a preferential right as to payment of dividend at a fixed rate during the life time of the company.
- Carries, on the winding up of the company, a preferential right to be repaid the amount of capital paid up.

It can be further classified as :

- Participating preferential shares.
- Cumulative preferential shares
- Non-Cumulative preferential shares
- Redeemable Shares and
- Irredeemable Shares

Equity or Ordinary Shares

Equity Share Capital with Reference to a Company, limited by shares, means a company which is not preference share capital.

After satisfying the rights of preference shareholders, the equity shareholders shall be entitled to share in the residual (remaining) amount of distributable net profit of the company.

Equity share capital is the sum total of equity shares. The dividends on equity shares is not fixed. It will be changing according to the magnitude of available profit for distribution in the form of Dividends.

Equity share capital of a company may consist of equity shares:

- With voting rights,
- With differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed.

Shares at Par : (The issue price of the shares at nominal or face value)

Shares at Premium : (The issue price of the shares is higher than their nominal or face value, the difference between issue price and face value is called premium.)

Shares at Discount : (The issue price of the shares is less than their nominal or face value)

Bonus shares : (The issue of bonus shares implies the payment of dividend in the form of shares instead of cash.)

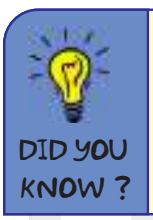
Right Shares : (The shares which are meant for the existing shareholders are known as right shares)

Let us Remember!

1. Issue of shares at discount is prohibited except by issue of sweat equity.
2. Share premium amount is not available for distribution of dividend.

Transfer and Transmission of Shares

- AOA provides for the procedure of transfer of shares. It is a voluntary action of the shareholder.
- It can be made even by a blank transfer -In such cases the transferor only signs the transfer form without making any other entries.
- In case it is a forged transfer, the transferor's signature is forged on the share transfer instrument.
- Transmission of shares is by operation of law, e.g. by death, insolvency of the shareholder etc.



2 times the Companies Bill was referred to Standing Committee before being passed by the Parliament.

Buy-Back of Securities

- The company may purchase its securities back and it is popularly known as buy back of shares.
- To do so, the company has to be authorized under the AOA.
- The company has to comply with the provisions of the company law to buy back its securities.

The listed company has to seek permission from the SEBI (SERA 1998). Specifically, for the private company etc. The Buy Back Securities Rules 1999 will be applicable.

Share Certificate and Share Warrant

Share Certificate

According to Section 84 : A share certificate is a certificate issued by the company under its common seal specifying the share held by any member. It is an evidence, of the title of the allottees or transferee of shares.

- **Share Certificate :** The Share Certificate is a document issued by the company and is prima facie evidence to show that the person named therein is the holder (title) of the specified number of shares stated therein.
- Share certificate is issued by the company to the (shareholder) allottee of shares.
- The company has to issue within 3 months from the date of allotment. In case of default the allottee may approach the central government. (Section 113)
- A certificate may be renewed or a duplicate of a certificate may be issued if such certificate: - is proved to have been lost or destroyed, or having been defaced or mutilated or torn and the same is surrendered to the company (Section 84(2))

Contents of Share Certificate

- Name and address of the registered office of the company.
- Serial number of the share certificate.
- Day and date of issue of the share certificate.
- Name and address of the shareholder.
- Number of the shares held by the shareholder.
- Distinctive numbers of shares.
- Class of shares.
- Nominal value of each share.
- Amount paid on each share.
- Revenue stamp.
- Impression of the common seal of the company.
- Space for the signature of two directors and the secretary.

The share certificate form consists of the three parts :

- The counterfoil for reference.
- The certificate number, and
- The receipt to be signed by the shareholder on receiving the certificate.

The share certificate forms are consecutively numbered and invariably bound in a book form.

Every share certificate shall be issued under the common seal of the company to be affixed in the presence of at least two directors and the secretary of the company. Also, all these persons must sign the share certificate.

Share Warrant

- The share warrant is a bearer document issued by the company under the common seal of the company stating that the bearer is entitled to the shares mentioned therein.
- As share warrant is a negotiable instrument, it is transferred by endorsement and by mere delivery like any other negotiable instrument.

- A public company, limited by shares, may if so, authorized by its articles, with the previous approval of the central government and in respect of fully paid-up shares, issue a share warrant under its common seal. A private company cannot issue share warrant. (Section 114).

Conditions for the issue of Share Warrants

- The shares must be fully paid up.
- The Articles of the company must authorize to do so.
- The company must obtain the permission of the central government.
- The share warrants must be issued under the common seal of the company.
- Only public companies limited by shares can issue share warrants and a private limited company cannot issue share warrants.

Contents of Share Warrants : Share warrants consists of three parts

Counterfoil share warrant and dividend coupon.

- Name of the company
- Address of the registered office of the company
- Serial number of the share warrant
- Number of the share held by the shareholder
- Distinctive number of shares
- Nominal value of each share
- Day and date of issue of the share warrant
- Space for the signature of two directors and the secretary

Dividends

- The sharing of profits in the going concerns and the distribution of the assets after the winding up can be called as dividends
- It will be distributed among the share's holder.
- The dividends can be declared and paid out of:
  - Current year's profit of the company, or
  - Undistributed or accumulated profits of the previous years, or
  - Out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that government.
- It can be paid after presenting the balance sheet and profit and loss account in the AGM.
- Other than the equity shareholders, even the preferential shareholders can get the dividends. Rather they are the first ones to get the dividends.
- Dividends are to be only in cash, if otherwise specified in the AOA.
- In exceptional cases, even the central government may permit the payment of interest to shareholders, even though there is no profit.

Debentures

"Debentures" are the loans that are repayable on a fixed date, but some debentures are irredeemable securities (these are sometimes called perpetual bonds), which means that they do not have a fixed date of expected return of the funds.

According to Section 2 (30) of the Companies Act, 2013 define inclusively debenture as "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.

Advantages of Debentures

- Investors who want fixed income at lesser risk prefer them.
- As a debenture does not carry voting rights, financing through them does not dilute control of equity shareholders on management.
- Financing through them is less costly as compared to the cost of preference or equity capital as the interest payment on debentures is deductible.
- The company does not involve its profits in a debenture.
- The issue of debentures is appropriate in the situation when the sales and earnings are relatively stable.

Disadvantages of Debentures

- Each company has certain borrowing capacity. With the issue of debentures, the capacity of a company to further borrow funds reduces.
- With redeemable debenture, the company has to make provisions for repayment on the specified date, even during periods of financial strain on the company.
- Debenture put a permanent burden on the earnings of a company. Therefore, there is a greater risk when the earnings of the company fluctuate.

Types of Debenture

1. **Secured and Unsecured :** Secured debenture creates a charge on the assets of the company, thereby mortgaging the assets of the company. Unsecured debenture does not carry any charge or security on the assets of the company.
2. **Registered and Bearer :** A registered debenture is recorded in the register of debenture holders of the company. A regular instrument of transfer is required for their transfer. In contrast, the debenture which is transferable by mere delivery is called bearer debenture.
3. **Convertible and Non-Convertible :** Convertible debenture can be converted into equity shares after the expiry of a specified period. On the other hand, a non-convertible debenture is those which cannot be converted into equity shares.
4. **First and Second :** A debenture which is repaid before the other debenture is known as the first debenture. The second debenture is that which is paid after the first debenture has been paid back.

Shareholder or Member

The term shareholder refers to a person who holds or owns share in a company while the term "member" on the other hand, refers to a person whose name appears on the register of members.

For all the purpose of the words shareholder and member are used interchangeably and synonymous because in normal course a shareholder will also be a member and a member will also be a shareholder.

However, there are a few exceptional cases where a person may become a member of a company without, being its shareholder and vice versa.

For Example : Unlimited companies or companies limited by guarantee having no share capital will have only members but no shareholder. On the other hand, the holder of a share warrant is a shareholder but not a member as his name is removed from the register of members immediately after the issue of such share warrant. Similarly, a transfer or the legal representative of the deceased person may be a shareholder, but he may not be a member until he gets his name entered in the register of the members.

Definition of Member : It is defined in section 41 of the act as follows :

1. The subscribers of the MOA of a company shall be deemed to have agreed to become members of the company, and on the registration of the company, shall be entered as members in its register of members.
2. Every other person who agrees in writing to become a member of a company and whose name is entered in its "Register of Member" of the company.

Methods of Acquiring Membership of a Company

- **By subscribing to the MOA of the company before its registration.** (Statutory members) "Deemed to be members from the date of the incorporation of the company without any allotment of shares and without any entry in the register of members." He acquires full status of a member on the registration of the company with all rights and liabilities. The subscriber to the memorandum must take the agreed number of shares directly from the company and must make the payment in cash.
- **By agreeing with the company to take shares and being placed on the register of members. (Two conditions must be fulfilled -** written agreement to take the shares and the person name to appear on the register of members)
- **By acquiring qualification shares** (By the directors who have signed and delivered to the registrar a written undertaking to take qualification shares and to pay for them becomes members of the company and they are treated as if they are subscribers to the MOA.)
- **By taking a transfer of shares and being placed on the register of members.** (This can be done by sending an instrument in writing to the company completed in all respect and when the name of the transferee is entered in the records of the company, he becomes a member.)
- **By transmission of shares** (In transmission of shares, the ownership of shares passes to the legal representative of the deceased member by operation of law. In the case of transmission there is no need of any instrument of transfer only the willingness to become member of the legal representative is required.)
- By registration on succession to a deceased or bankrupt member.
- By allowing his name apart from an agreement to become member to be on the register of members.

Termination or Cessation of Membership

- When he transfers his shares.
- When his shares are validly forfeited by the company.
- When he makes a valid surrender of his shares to the company.
- When his shares are expropriated.

- When his shares are sold by the company under power in its article to enforce a lien.
- When he is holding redeemable preference shares which are being redeemed. When he dies and his shares are passed on to his legal representative.
- When he is declared insolvent and his shares are passed on the Official Receiver.
- When he has been issued share warrant in exchange of fully paid-up shares and article of the company do not recognize the holders of share warrants as members.
- When the company is being wound up, but he remains liable as contributory and is also entitled to his share in the surplus assets, if any.

Who may become a member?

Law has not prescribed any qualification to become member of the company. But any person who is competent to contract as per section 11 of the Indian contract Act, 1872 may become a member of a company. This is subject to the provisions of the MOA and AOA of the company. Articles of a company may also provide that certain persons cannot become members of the company.

Minors are not competent to become the members of a company because an agreement with a minor is void. *(Mohori Bibee vs. Dharmodas Ghose, (1903) I.L.R, 30 Cal. 539.*

In case if a contract of allotment of shares is signed between company and the minor in ignorance of the fact of the minority, either party has a right of repudiation of the contract.

In England, an infant may become a member of a company unless this is forbidden by the AOA of the company.

Firm : A partnership firm cannot become the member of a company because it has no separate legal status from the partner.

The partner of the firm can have the shares as joint holders and become member of the company.

Company : A Company may, if so, authorized by its AOA, become a member of another company.

Hindu Undivided Families (HUF) : If the HUF purchases shares of a company in the name of Karta, then only Karta shall be the member of a company, not the Hindu Undivided Family.

Insolvent : An insolvent can remain a member until his name appears on the Register of Members. He is also entitled to vote and attend meetings although his shares pass on the Official Receiver.

Fictitious Person : A person who takes the shares in the name of a fictitious person becomes liable as a member. However, such a person shall be imprisoned up to 5 years under section 68 (a).

Foreigners : Foreigners can become members of companies in India, but permission of Reserve Bank of India has to be obtained for this purpose. The right of the foreigner as a member will be suspended if he becomes an alien enemy.

Rights of Members

- Transfer of Shares
- Dividend and Distribution
- Shareholders pre-emption rights

- Right to participate in a winding-Up
- Rights regarding member's meetings
- Member's right to information
- Member's powers where the company is in default
- Right of members to apply for the restoration of a company
- Member's right to seek an investigation of a company
- Right to petition for the winding-up of a company
- Right to petition for relief in cases of oppression

Rights can be classified into the following three groups :

1. Statutory rights.
2. Rights given by the MOA (Documentary rights)
3. Rights given by the general law, especially that relating to contracts and members corporation i.e. Legal rights.

"Statutory rights cannot be taken away or modified by any provisions in the MOA or the Articles", for example :

Right to transfer shares U/s 82, right to receive share certificate for his shares U/s 113, right of priority to have shares offered in case of increase of capital U/s 81 and right to receive notice to move resolution, to vote at meetings, to demand a poll etc.

Individual Rights

- Right to obtain certain documents or copies of the same, they are :
  MOA, AOA, Resolution, and agreement share certificate, any trust deed, the register of members and index numbers and minutes of proceedings of general meeting.
- Right to inspect certain books or register, they are:
  Register of investments of company not held by it in its own name, register of members, index of members and debenture holders, copies of all annual returns and minute books of general meeting.
- Right to transfer shares or other interest subject to the AOA (sec.108).
- Right to priority to have shares offered in case of increase of capital. (sec. 81)
- Right to share in the assets of the company after distribution to creditors etc. (sec.511 and 475).
- Right in relation to meeting of the company, viz;{ To attend meeting, to receive notice of meeting, to vote at meeting and to move resolution}
- Right to apply to central government for relief in certain cases.
- Right to apply to the tribunal in cases of oppression and mismanagement (sec.397 & 398)
- Right to apply to the tribunal for winding up etc.
- Right to receive dividend.

Collective Rights : Following cases may be mentioned in relation to collective rights :

1. To require the directors to convene an extra-ordinary general meeting and to hold a meeting on refusal. Member holding 1/10th of the paid-up capital or those representing 1/10th voting power can exercise this right. {sec. 169}

2. To demand a poll {sec. 179}. Five members in case of a public company and one member in case of a private company
3. Right to apply to the central government to investigate the affairs of the company. {sec. 235}
4. Right to appoint auditors and to fix their remuneration {sec. 224}
5. Right to appoint directors at the AGM {sec. 225,226 & 227}
6. Right to remove directors {sec. 284}

Liability of Members

The liabilities of the members are as follows :

1. Apart from the express agreement, a shareholder/ member is liable to make the payment in cash of the whole nominal number of shares held by them.

   In case of company limited by guarantee, a member is liable to the extent of his guarantee and in an unlimited company to an unlimited extent. The amount of shares may not be paid all at once, but from time to time as and when the company makes calls on the shareholders. All moneys payable by any member to the company under the memorandum or articles of the company shall be a debt due from him to the company. {sec. 36}
2. Liability in case of reduction of members below 7 in a public company and 2 in a private company for the payment of whole debts of the company. {Section 45}.

Register of members : Section 150 of the companies act requires every company to keep a register of its members. The following particulars are required to be entered in the register :-

1. The name, address, and occupation of each member.
2. In case of a company having a share capital, the share held by each member and the amount paid on each share.
3. The date at which each person was entered in the register as a member.
4. The date at which any person ceased to be a member.

   If default is made in maintaining the register of members, the company and every officer of the company, who is in default, shall be punishable with a fine which may extend to rupees 500 for every day during which the default continues. {Sec. 150(2)}.

Section 164 of the companies act lays down that the register of members or that of debenture holders is a prima facie evidence of membership.

Every company with more than 50 members shall keep an index of members along with the register. The index may be in the form of a card index.

Both these things shall be kept at the registered office of the company and shall be kept open to inspection by members and debenture holders free and by other persons on nominal payment.

The register of the members shall be kept close during the general meeting of the shareholders, interim dividend or at the time of call is made.

Penalties

A Shareholder/ Member found to be abusing their powers or not fulfilling their duties are liable to penalties under the Companies Act. There are two types of criminal offences, summary, and indictable offences. A summary offence is usually a less serious offence and is tried before a judge only in the District Court. Indictable offences are generally a more serious offence and can only be tried in the District Court before a judge. The main difference between the two types of offences is that an indictable offence can also be tried in the Circuit Court in front of a judge and a jury.

Directors

Directors of a company are individuals that are elected as, or elected to act as, representatives of the stockholders to establish corporate management related policies and to make decisions on major company issues. The success of the company depends, to a large extent, upon the competence and integrity of its directors.

Appointment of a Director is not only a crucial administrative requirement but is also a procedural requirement that has to be fulfilled by every company. Under the Companies Act, 2013 only an individual can be appointed as a Director; a corporate, association, firm or other body with artificial legal personality cannot be appointed as a Director.

The Companies Act 2013 does not contain an exhaustive definition of the term "director". Section 2(34) of the act prescribed that **"director" means a director appointed to the board of a company.**

Section 2(10) of the Companies Act, 2013 defined that **"Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.**

The term 'Board of Directors' means a body duly constituted to direct, control and supervise the affairs of a company.

As per Section 149 of the Companies Act, 2013, **the Board of Directors of every company shall consist of individual only. Thus, no body corporate, association or firm shall be appointed as director.**

Again Section 166 (6) of Companies Act, 2013, prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void.

Director Identification Number (DIN)

As per Section 153 of the act, every individual intending to be appointed as director of a company shall make an application electronically in Form DIR-3 for allotment of Director Identification Number to the Central Government along with the prescribed fees.

Companies Amendment Act, 2017 provides that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed. No person shall continue or be appointed as director without obtaining DIN.

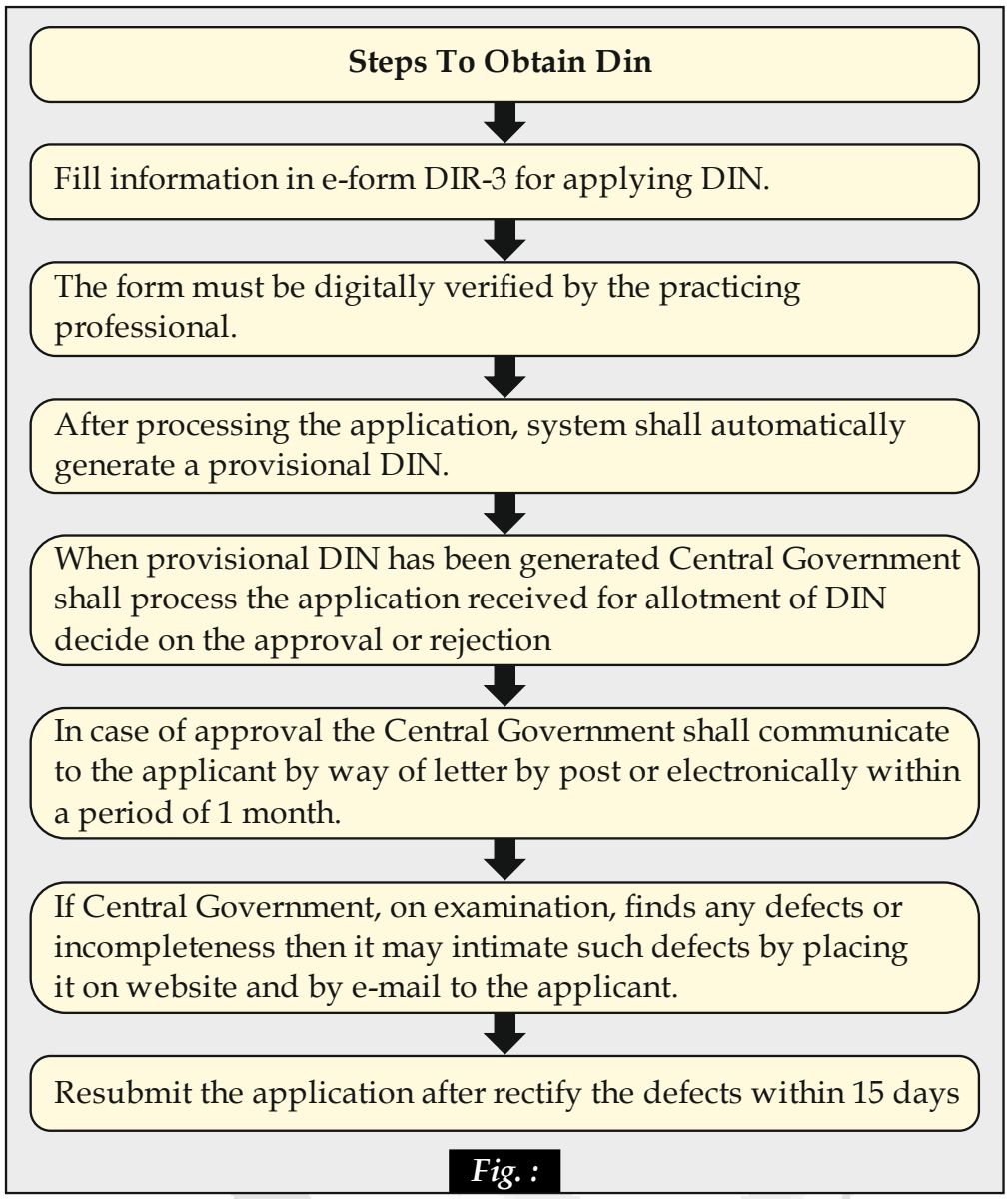


Fig. :

Types Of Directors

A director so appointed may either be executive director or non-executive director.

An Executive Director can be either a Whole-time Director of the company (i.e., one who devotes his whole time of working hours to the company and has a significant personal interest in the company as his source of income), or a Managing Director (i.e., one who is employed by the company as such and has substantial powers of management over the affairs of the company subject to the superintendence, direction and control of the board).

In contrast, a non-executive Director is a Director who is neither a Whole-time Director nor a Managing Director.

A director to the board may be appointed as

- First Director
- Resident Director
- Women Director
- Independent Director
- Alternate Director

- Additional Director
- Small Shareholder Director
- Nominee Director
- Casual Vacancy

First Director : Section 152 of the act provides for the appointment of first directors, accordingly, where there is no provision made in Articles of Association of the company for appointment of first directors then the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

Resident Director : Section 149(3) provides that every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days during the financial year. Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

Women Director : Second proviso to section 149(1) read rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one Women Director.

All Listed Companies	
Public companies	with paid up capital of 100 crore or more or with turnover of 300 crore or more

Independent Director : An independent director means a director other than a managing director or a whole-time director or a nominee director who does not have any material or pecuniary relationship with the company/directors. Basically, an independent director is a non-executive director. Section 149(4) read with Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 provides following companies to have specified number of independent directors.

All listed public companies	At least 1/3rd of total number of independent Directors
Other public companies with paid up capital of ₹ 10 crore or more or with turnover of ₹ 100 crore or more or with outstanding loans, debentures and deposite of ₹ 50 crore or more	At least 2 independent Directors

Presence of Independent Director in Committees	
Name of the Committees	Compositions
Audit Committee	The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.
Nomination and Remuneration Committee	The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one-half shall be independent
Corporate Social Responsibility	Corporate Social Responsibility Committee shall consist of three or more non-executive directors out of which at least one should be an independent director.

Additional director Section 161(1) of the Companies Act, 2013, provides that the articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. In case of default in holding annual general meeting, the additional director shall vacate his office on the last day on which the annual general meeting ought to held. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director. Section 161(1) of the act applies to all companies, whether public or private.

Alternate Director Section 161(2) of the act empowers the Board, if so authorized by its articles or by a resolution passed by the company in general meeting, to appoint a director (termed as alternate director) to act in the absence of a original director during his absence for a period of not less than three months from India.

Nominee director Section 161(3) of the Companies Act, 2013, provides that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a government company.

Director elected by Small Shareholders : According to section 151 of the act every listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed. "Small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Director in casual vacancy : Section 161(4) provides that If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

Appointment of Directors

According to Section 2 (34) of the Companies Act, 2013, "Directors means a director appointed to the board of a company."

According to Sec.2 (10) of the Indian Companies Act, 2013, "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;

Section 149 of the Companies Act, 2013, makes it obligatory on every public company to have at least three directors and on every other company to have at least two directors. The directors may be appointed in the following ways:

1. Appointment of First Directors (Sec. 152) : First directors mean the director of the company who assumes office from the date of incorporation of the company. The first directors of a company may be named in its articles of association and if it is not mentioned, then the subscribers of the memorandum of association who are individual, shall be deemed to be the first directors of the company, until the directors are not appointed in accordance with Section 152.

In case of public company, if the article provides any share qualification, only such subscribers as possess the necessary share qualification shall be deemed to be directors. The articles at the time of registration may contain the names of the first directors until directors are appointed in the first general meeting.

In case of a OPC, an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this Section. [Sec. 152(1)]

It is the usual practice to submit a list of proposed directors and their written consent to become first directors of the company at the time of registration of company to the Registrar. [Refer Sec. 7(1)] In such a case, **the first directors shall be the persons whose names appear in the list and who have given their written consent to become first directors of the company.**

2. Appointment of Directors by Members in the General Meeting (Sec. 152(2) : Except for the first director, the subsequent directors are appointed by the company in the general meeting. Sec. 152(2) provides that not less than 2/3 of the total number of directors of a public company, or of a private company which is subsidiary of a public company must be appointed by the company in general meeting. These directors must be subject to retirement by rotation. The remaining directors of such a company and a purely private company are appointed by the company in general meeting

3. Appointment by Board of Directors : The directors are appointed in the general meeting by the members. But, the Board of Directors may also appoint the directors, in the following way:

(a) **Additional Directors :** Section 161, of the act, lays down that the Board may appoint additional directors if the article of association of a company empower the Board of Directors to do so. Such additional directors shall hold office only up to the date of the next annual general meeting. If the annual general meeting is not held, then such additional director vacates his office on the last day on which the annual general meeting should have been held in terms of Section 166. The additional directors are exempted from the requirement of filing consent to act as directors.

(b) **Casual Vacancies :** Section 161 empowers the Board of Directors to appoint the directors in the casual vacancy which may occur due to any reasons like, death, resignation, insanity, insolvency etc of the directors. Such casual vacancy may be filled according to the regulations and procedure prescribed by the articles of association. A person appointed to fill a casual vacancy will hold office only till the date up to which the directors in whose place, he is appointed would have held office.

(c) **Alternate Directors :** The Board Meeting may be held at a time when a director is, absent for a period of more than three months from the state and in such a situation, an 'alternate director' is appointed. The Board of Directors can appoint the additional director in the absence of a director if so authorized by articles or by a resolution passed by the company in general meeting. The alternate director shall work until the original director return or up to the period permitted to the original director. The provision of the act not applicable to the alternate director is as:

A. The appointment of an alternate director is not considered as an increase in the strength of the Board of Directors.

B. Alternate Directorship held by a person cannot be counted for the maximum number of directorship, which a person can hold.

C. An alternate director is not required to hold any qualification shares.

(d) Nominee Director : Such director is appointed by the Board if any **person is nominated by an institution such as financial institution or by the Government** holding the shares in the company. [Sec. 161(3)]

4. Appointment of Directors by Central Government : At least 100 members of the company or the members of the company who hold at least one-tenth of the total voting power, approach the Central Government for appointing a director to safeguard the interest of the company or its members or the public or to curb the oppressive and mismanagement of company's affairs.

The term of appointment of the directors by the Central Government should not exceed 3 years and he may be removed by the Central Government for appointing another person to hold the office.

5. Appointment of Directors by Third-Parties if the Article provides (Sec. 152) : A company may have 'nominee directors' which is permissible in a company if the articles of association gives power to such third parties to appoint their nominee on company's board. Here the third party may be debenture holders, financial corporation, banking companies who have advanced loan to the company to safeguard their interests that the money is only used for the purpose for which it was borrowed.

6. Appointment of Directors By small shareholders if the article provides : The Small shareholders, in case of a public company having:

(i) A paid-up capital of five cores rupees or more, and

(ii) One thousand or more small shareholders.

May have a director elected by such small shareholders in the manner as may be prescribed.

The directors are appointed by ordinary resolution i.e. through the majority of the shareholders. The minority of the shareholders does not get the opportunity to send representative in the Board of Directors. But, through proportional representative voting, the shareholders can get that opportunity.

7. Appointment of Directors by Proportional Representation (Sec. 163) : The Directors of a company are generally appointed by simple majority. As a result majority shareholders controlling 51% or more votes may elect all directors and a substantial minority of 49% may not find any representation on the board. This section give power to the minority shareholders to elect directors through single transferable vote and cumulative voting.

The articles of a company may provide (an option) for the appointment of not less than two-third of the total number of directors of a public company in accordance with the principle of proportional representation. The appointments may be made **once in every 3 years.** The casual vacancies of such directors shall be filled in accordance with the provisions of section 161(4). [Sec. 163].

Proportional representation may be decided by any of the following system :

1. Single transferable vote system and
2. Cumulative transferable vote system

1. Under the single transferable vote system, names of all the candidates for the election are entered on a ballot paper. Each voter is required to give his preference to the candidates subject to the maximum number of directors to be elected. In case directors to be elected are five, each voter can give preference to 5 candidates.

After voting, a quota of vote is calculated and fixed for getting elected. Any candidate who gets this quota of votes is declared elected. The quota is fixed in the following manner:

$$\text{Quota} = \left(\frac{\text{Total Number of Votes Cast}}{\text{Number of directors to be elected}} \right) + 1$$

Suppose, five directors are to be elected and the total number of votes cast are 1,500. Then the quota is :

$$\text{Quota} = \left(\frac{1,500}{5} \right) + 1$$

The five candidates who get 251 votes shall be declared elected. Any other candidate cannot get 251 votes because first 5 candidates will get 1255 votes and the balance is only 245 votes. If all the remaining votes go in favour of any one candidate, he cannot be elected.

2. Under the cumulative voting system, a member is entitled to one vote for every share held by him for every director to be elected. If a member has 100 shares and the number of directors to be elected is 5, he is entitled to cast 500 votes. Under this system, he can cast all his votes in favour of one candidate or he may distribute his votes among all or some of the candidates. The 5 candidates getting the highest number of votes will be declared elected.

Removal of Directors

A director of a company can be removed by

(a) Shareholders (Sec. 169)

(b) The Tribunal (Sec. 242)

(a) Removal by shareholder : Section 169 empowers the company to remove a director by ordinary resolution before the expiry of his period of office except in the following cases:

(1) A director appointed by the tribunal under sec. 242;

(2) A nominee director of a public financial institution which is by its charter empowered to nominate a person as a director or to remove him notwithstanding any power contained in any other act;

(3) Director appointed in accordance with the principal of proportional representation, under section 163. This is to ensure that the directors appointed by the minority are not removed by a bare majority.

Special Notice : Special Notice is required of any resolution to remove a director or to appoint somebody in his place at the meeting at which he is removed. This notice shall be given at least 14 days before the meeting. On receipt of such notice, the company will immediately send a copy thereof to the director concerned. He may make any representation in writing and the copy of such representation may be sent by the company to every member. Where the copy of the representation is not sent to the members, in that case the director concerned may require the representation to be read at the meeting.

A vacancy created by the removal of a director as aforesaid can be filled up at the meeting at which he is removed provided special notice of the proposed appointment was also given. The director is entitled to be heard and to make representation. The director so appointed shall hold office till the date the director removed would otherwise have hold office. If the vacancy is not filled, it shall be filled up as casual vacancy except that the director removed shall not be re-appointed. The director so removed is entitled to claim compensation or damages for branch of contract.

If the concerned director makes a request to the company for notification of the representation to the members, the company shall, **if time permits it to do so,** take the following steps :

(a) It shall state the fact of the representation made by the director in the notice of the resolution given to the members.

(b) It shall send a copy of the representation to every member of the company to whom notice of the meeting is sent.

If a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may (without prejudice to his right to be **head orally**) **require that the representation shall be read out at the meeting.** [Sec. 169(4)]

The director, who was removed from office, shall not be re-appointed as a director by the Board of directors. [Proviso to Sec. 169(7)]

The removed director shall be entitled to compensation or damage which is payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director.

(b) Removal by the Tribunal : On an application to the Tribunal for prevention of oppression and mismanagement, the tribunal may terminate or set aside or modify any agreement between the company and the managing director, or any other director or manager. On such termination, the director cannot serve the company in a managerial capacity for a period of five years from the date of the order of termination, without the permission of the tribunal. The director on removal cannot sue the company for damages or compensation for loss of office (Sec. 243).

When appointment of a director etc. is so terminated, it shall be necessary for the Tribunal to satisfy the following conditions :

(i) Notice of the intention to apply for leave has been served on the Central Government.

(ii) The Government has been given a reasonable opportunity of being heard in the matter. [Sec. 243(1)]

Consequences/Effects–Removal of director or modification of agreement with a director by the order of the Tribunal will have the following effects :

(a) Such order shall not give rise to any **claims against the company** by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise.

(b) No managing director or other director or manager whose agreement is so terminated or set aside shall, **for a period of 5 years from the date of the order** terminating or setting aside the agreement, **without the leave of the Tribunal,** be appointed, or act, as the managing director or other director or manager of the company.

A person knowingly acts as a managing director or other director or manager of a company in contravention of the above provisions i.e., before completion of 5 years from the date of the order. In such a case, the person who acts as such and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to 6 months or with the fine which may extend to ₹ 5 lakh or with both.

Removal of a non-rotational director of a government company

Directors appointed by the state government as a nominee director can be removed by such government. The government is entitled to revoke the nomination as a matter of right, which flows from the articles of association. Revoking of the appointment by the government under the articles is not the same thing as removal of a director by the company under sec. 169. Hence, if the government revokes the nomination, there is no contravention of section 169.

Composition & Number of Directorships

Every Company to have Board of Directors : Every company shall have a Board of directors consisting of individuals as directors. [Sec. 149(1)]

Minimum Number of Directors

(i) **In case of public company :** Every public company shall have a **minimum of 3 directors** on its Board.

(ii) **In case of private company :** Every private company (other than OPC) shall have a **minimum of 2 directors** on its Board.

(iii) **In case of OPC :** Every One Person Company shall have **minimum of one director** on its Board. [Sec. 149(1)]

Maximum Number of Directors

Every company may have maximum of 15 directors on its Board. However, any company may appoint more than 15 directors after passing a special resolution.

Woman Director

Only such class or classes of companies, as may be prescribed, shall have at least one woman director.

The Rules Notified by the MCA have prescribed that any of the following class of companies shall appoint at least one woman director :

(i) Every listed company.

(ii) Every other public company having paid-up share capital of ₹ 100 crore or more.

(iii) Every other public company having turnover of ₹ 300 crore or more. [Rule DIR-3]

Appointment in new companies : A newly in corporated company which falls under any of the above stated categories shall comply with such provisions **within a period of 6 months from the date of its incorporation.** [Rule DIR-3]

Filling up vacancy : Any intermittent vacancy of a woman director shall be filled up by the Board at the earliest. But it shall be filled up **not later than immediate next Board meeting or 3 months from the date of such vacancy,** whichever is later. [Rule DIR-3]

One Director to be with Minimum Stay in India

Every company shall have at least one director who stays in India for a total period of **not less than 182 days during the financial year. [Sec. 149(3) as amended in 2017]**

In case of a newly incorporated company this requirement shall apply proportionately at the end of the financial year in which it is incorporated. **[Proviso to Sec. 149(3) Inserted in 2017]**

Every listed public company shall have **at least one-third of the total number of directors** as independent directors or IDs.

Small Shareholder's Directors

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

"Small Shareholder" means a shareholder holding shares of nominal **value of not more than 20,000 or such other sum as may be prescribed.**

Number of Directorships

Maximum Number of Directorships

No person shall hold office as a director, including any alternate directorship, in more than **20 companies** at the same time.

Directorship Held in Public Companies

The maximum number of public companies in which a person can be appointed as a director **shall not exceed 10.** [Sec. 165(1)]

Members' Right to Limit Directorships

The members of a company may, be special resolution, **specify any lesser number of companies** in which a director of the company may act as director.

Punishment : No person shall act as director in more than the specified number of companies. If a person accepts an appointment as a director in contravention of above provisions, he shall be punishable **with fine which shall not be less than 5,000 but which may extend to 25,000 for every day after the first day during** which the contravention continues. [Sec. 165(5) and (6)]

The Legal Status of the Director

The director occupies the position of a:

- **As A Trustee :** In relation to the company
- **As Agents :** When they act on behalf of the company
- **As Managing Partner :** As they are entrusted with the responsibility of the company Qualification Shares
- **Directors as Officers :** A director is an officer of the co and held liable & punishable for any defaults made by him.
- **Directors as Employees :** If the director holds a salaried employment in addition to the director ship, he will be rated as an employee.
- **Director as Organ of the Company :** Directors are considered organs of co. under the influence of the theory & corporate life.

In case there is requirement as per the AOA, the director is bound to buy qualification shares.

If acts are done by the director prior to he or she is being disqualified, the acts are considered to be valid

Disqualifications

As per the company law, the following persons are disqualified from been appointed as a director :

- Unsound mind
- An undischarged insolvent
- A person who is convicted by the court
  - (i) Imprisoned for not less than 6 months and a period of 5 years has not passed from the sentence
  - (ii) The person imprisoned for 7 or more years than he shall not be eligible to the appointed as director.
- Who has applied for being adjudged insolvent
- Not paid for the call on shares
- Persons who are already directors in maximum number of companies as per the provisions of the act or
- Any other person who has been disqualified by the court for any other reason
- **Has been convicted of the offence dealing with related party transactions** (under Sec. 188) **at any time during the last preceding 5 years.**
- Any person who **has not applied for and allotted (under Sec. 152(3)] the Director Identification Number** or DIN. [Sec. 164(1)]

Duties and Liabilities of The Directors

Duties of directors may be classified under two heads :

I. General duties under the Companies Act.

II. Special duties under the Companies Act.

I. General Duties Under the Companies Act

1. To act in accordance with articles
2. To act in good faith to promote objects of the company

> **"Lindley, L.J.** has observed that **"Directors must act honestly** ... . **If they act honestly for the benefit of the company they represent, they discharge both their equitable as also their legal duty to the company."**

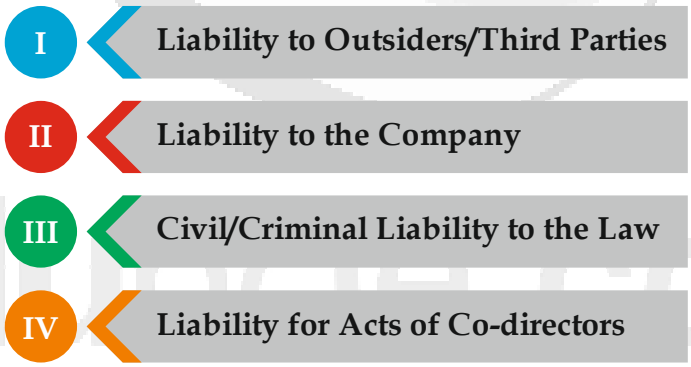
3. To perform duties with due and reasonable care and diligence
4. Not to act in conflict of interest with the company
5. Not to achieve any under gain : Guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company. [Sec. 166(5)]
6. Not to assign office : The directors of a company should not assign their office. Any assignment so made shall be void.

Punishment : If a director of the company contravenes any of the above provisions, such director shall be punishable with fine which shall **not be less than ₹ one lakh but which may extend to ₹ 5 lakh.** [Sec. 166(7)]

II. Special Duties Under the Companies Act

1. To ensure full and correct disclosure in prospectus
2. To make declaration in the prospectus
3. To Sign the prospectus
4. To deliver prospectus to Registrar before issue
5. To keep deposited application money in a scheduled bank
6. To file return of allotment
7. To deliver share certificates
8. To sign and file annual return
9. To make declaration as to payment of value of shares and paid-up capital of the company.
   (i) Every subscriber to the memorandum has paid the value of the shares agreed to be taken by him.
   (ii) The **paid up share capital of the company is not less than ₹5 lakh in case of a public company and not less than ₹ one lakh in case of a private company on the date of such declaration.** [Sec. 11]
10. To call AGM
11. To lay financial statements before AGM
12. To recommend dividend and pay
13. To prepare and attach directors report
14. To file the financial statements with the Registrar
15. To call Board meetings
16. Duty to disclose interest in other companies
17. To disclose interest in contract
18. To help the investigation of affairs of the company

Liabilities of Directors



I. Liability to Third Parties

1. Breach of implied warranty of authority : The directors, enter into a contract within the powers of the company but beyond the scope of their own authority defined by the articles. In such a case, they make a breach of implied warranty of authority. Therefore, they are personally liable for such contracts to the third party.

2. Omission or Misstatement in the Prospectus : The subscribers may also hold directors liable for issue of such prospectus by an action for deceit under general law of the land.

3. Failure to repay application money on non-receipt of minimum subscription : If a company fails to receive minimum subscription, it must repay the application money within the prescribed time. If it fails to repay, the directors are personally liable to repay the same. [Sec. 39]

4. Failure to repay application money on refusal to list shares : The company must repay the application money within the prescribed time. If the directors fail to do so, they are personally liable to repay the same.

5. Fraudulent Trading : In such a case, the Tribunal may, if it thinks proper to do so, declare that any persons (who is or has been a director, or any persons) who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

II. Liability to the Company

1. Ultra Vires Acts : Directors do certain acts or make contracts beyond the provisions of the Companies Act or memorandum or articles of the company. In such a case, the directors are personally liable for the loss caused to the company. They are personally liable to repay it to the company. [Sharpe Re, (1892) 1 Ch 154]

2. Mala Fide Acts : Directors act *mala fide*, i.e., otherwise than honestly. Such acts are in breach of trust. The directors are, personally liable to make good the loss sustained by the company by reason of *mala fide* acts. [R.K. Nedungadi v. Malyalie Bank Ltd., AIR (1971) SC 829]

3. Negligence : Directors fail to exercise their powers with such reasonable care and diligence as is expected from the persons of their knowledge and experience. In such a case, they may be held personally liable to make good the loss sustained by the company.

III. Civil and/or Criminal Liability

1. Issuing prospectus which includes any untrue statements
2. Fraudulently inducing persons to invest money
3. Failure to repay excess application money
4. Failure to file return of allotment
5. Failure to make application for listing of securities in stock exchange
6. Failure to deliver share/debenture certificate within prescribed time after allotment or transfer
7. Concealing the name of creditors etc. at the time of reduction of capital
8. Failure to file particulars of charges with the Registrar
9. Failure to comply with provisions regarding annual return
10. Failure to hold AGM
11. Failure to file copies of certain resolutions, agreement, explanatory statement with the Registrar
12. Failure to distribute dividend within thirty days
13. Failure to maintain proper books of accounts

14. Failure to lay financial statements at AGM
15. Failure to comply with accounting standards in preparation of financial statement
16. Failure to attach to financial statement a report of the Board of directors and directors' responsibility statement.
17. Failure copy of financial statement to file with Registrar
18. Contribution to political parties beyond the specified limit
19. Failure to assist Registrar or any other authorised officer by the Central Government in inspection of books of accounts etc.
20. Failure to comply with the restrictions on issue of shares and prohibitions on transfer of securities by the Tribunal
21. Acting as managing director/director after termination of appointment by the Tribunal
22. Making false statements, reports, certificates
23. Giving false evidence
24. Wrongful withholding of company's property

IV. Liability for the Acts of Co-directors

A director is neither an agent nor a servant of his co-director. However, a director can be liable for the acts of his co-directors only in the following cases :

1. If the co-directors do any act with the knowledge of such other director.
2. If the other director participates in the meeting of the Board in which the act is done or approved.
3. If the other director participates in the meeting in which the minutes of the meeting are confirmed at which such act was approved.
4. If the other director later gives his consent to the act done by the directors.

In case, only one director is held liable for the acts of all his co-directors, he can claim contribution from his co-directors who are parties to the acts done.

Liability of Independent and Non-Executive Directors

An independent director and a non-executive director (not being promoter or key managerial personnel) shall be held liable only in respect of such acts of omission or commission by a company which had occurred on account of any of the following reasons :

(i) With his knowledge, attributable through Board processes.
(ii) With his consent or connivance.
(iii) Where he had not acted diligently.

Power of Court to Grant Relief

In any proceedings against any director for negligence, breach of duty or trust or misfeasance etc., the Court may grant relief against undue hardship even if he is or may be liable in respect of such negligence, default, breach of duty, misfeasance or breach of trust. But the court may grant relief only when it appears to the court that he has acted honestly and reasonably and that having regard to all the circumstances of the case, he ought fairly to be excused. The Court may relieve him, either wholly or partly,

But in criminal proceedings, the court has no power to grant relief from civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

Punishment for Contravention

If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees, but which may extend to five lakh rupees.

Power of Board of Directors

The Board of Directors of a **Company** are entrusted with the rights and obligations for the conduct of the company. Hence, the Board of Directors of a company enjoy certain powers and privileges to conduct business operations smoothly without repetitive approvals from the shareholders. In this article, we look at such powers enjoyed by Board of Directors of a company.

Power of Board – Allowed without Board Resolution

The Board of Directors of a company is entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do as per the memorandum of association or articles of association or any other regulations made by the company in a general meeting.

Power of Board – Allowed by Resolution Passed at Meeting of the Board

The Board of Directors of a company can exercise the following powers on behalf of the company only by means of resolutions passed at meetings of the Board:

- To make calls on shareholders in respect of money unpaid on their shares;
- To authorise buy-back of securities under section 68;
- To issue securities, including debentures, whether in or outside India;
- To borrow monies;
- To invest the funds of the company;
- To grant loans or give guarantee or provide security in respect of loans;
- To approve financial statement and the Board's report;
- To diversify the business of the company;
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company;
- To make political contributions;
- To fill a casual vacancy in the Board;
- To enter into a joint venture or technical or financial collaboration or any collaboration agreement;
- To commence a new business;
- To shift the location of a plant or factory or the registered office;
- To appoint or remove key managerial persons and senior management personnel one level below the key managerial personnel;
- To appoint internal auditors;
- To adopt a common seal;
- To take note of the disclosure of Director's interest and shareholding;

- To sell investments held by the company, constituting five percent or more of the paid-up share capital and free reserves of the investee company;
- To accept public deposits and related matters;
- To approve quarterly, half-yearly and annual financial statements.

Managerial Personnel

Companies Act, 2013 (Act) has introduced many **New Concepts and Key Managerial Personnel** is one of them. While the Companies Act, 1956 recognised only Managing Director, Whole Time Director and Manager as the Managerial Personnel, the Companies Act, 2013 has brought in the concept of Key Managerial Personnel which not only covers the traditional roles of managing director and whole time director but also includes some functional figure heads like Chief Financial Officer and Chief Executive Officer etc. These inclusions are in line with the global trends.

"Company Secretary" has also been brought within the ambit of Key Managerial Personnel giving them the long deserved recognition of a Key Managerial Personnel of the Company. Another noteworthy feature of this concept is that it combines the important management roles as a team or a cluster rather than as independent individuals performing their duties in isolation to others.

General Meaning : The term key management personnel includes those people having authority and responsibility for planning, directing, and controlling the activities of an entity, either directly or indirectly.

Key management personnel are employees who have the authority to directly or indirectly plan and control business operations. The term key management personnel is a relative term dealing with specific operations.

As per Companies Act, 2013: Under Companies Act, 2013 Definition of "Key Managerial Personnel" given under Section- 2 sub section- 51. As per this key managerial personnel includes following:

The above definition is an exhaustive definition but point number (v) gives the power to the legislature to include some other personnel also within the definition of Key Managerial Personnel as may be deemed fit by them from time to time. As of now, no further prescription has been made pursuant to point number (v) and therefore, as on date, the definition is confined to the six personnel mentioned above.

Let's Discuss the Definitions: The definitions of all Six terms used in definition of Key Managerial Personnel:

Company Secretary : As per Section 2 sub section 24 of Companies Act, 2013

Company Secretary or secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a **Company Secretary** under this Act;

As per Company Secretary Act, "Company Secretary" means a person who is a member of the Institute of Company Secretary of INDIA.

Managing Director : As per Section 2 sub section 54 of Companies Act, 2013

A director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Manager : As per Section 2 sub section 53 of Companies Act, 2013

An individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

Whole Time Director : As per Section 2 sub section 54 of Companies Act, 2013

A director in the whole-time employment of the company.

Chief Financial Officer : As per Section 2 sub section 19 of Companies Act, 2013

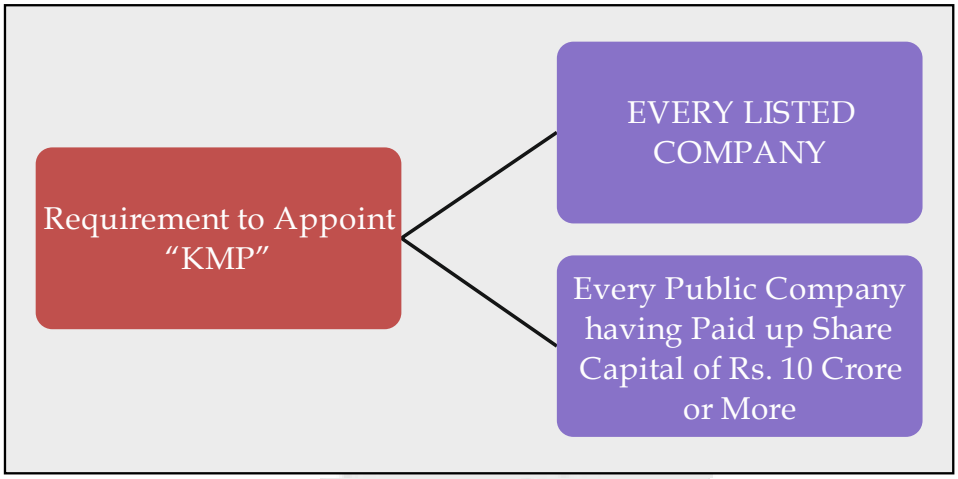
A person appointed as the Chief Financial Officer of a Company. Generally a person who leads the finance and treasury functions of a business enterprise is designated as "CFO". The person appointed as the CFO under this act is also considered as a Key Managerial Personnel (KMP). A CFO of the company should be a person who is appointed as a CFO and not engaged in any other manner (retainer or consultant) or by any other designation.

Chief Executive Officer : As per Section 2 sub section 18 of Companies Act, 2013

A person appointed as the Chief Executive Officer of a Company.

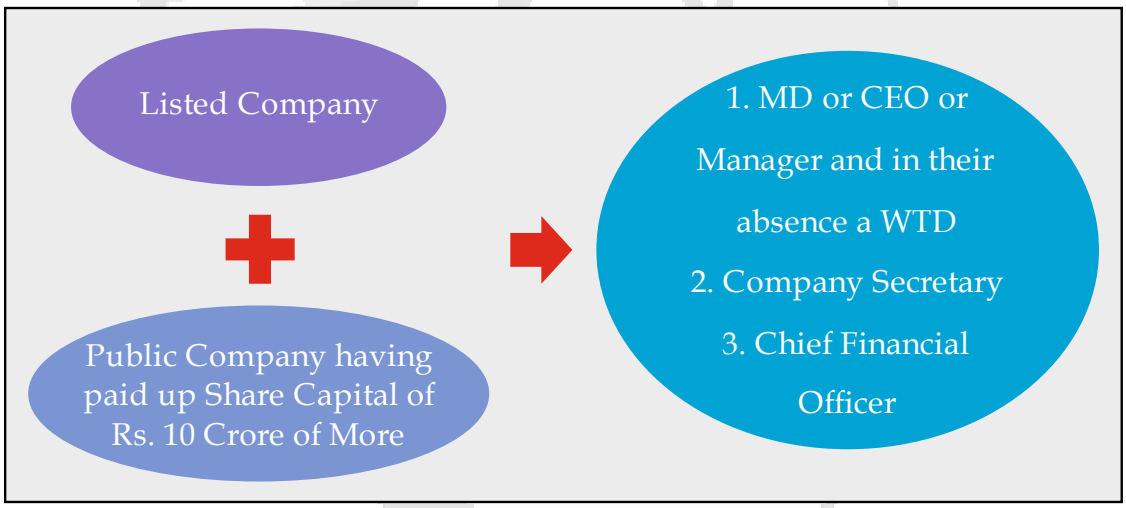
Companies Which Required to Appoint "Key Managerial Personnel"

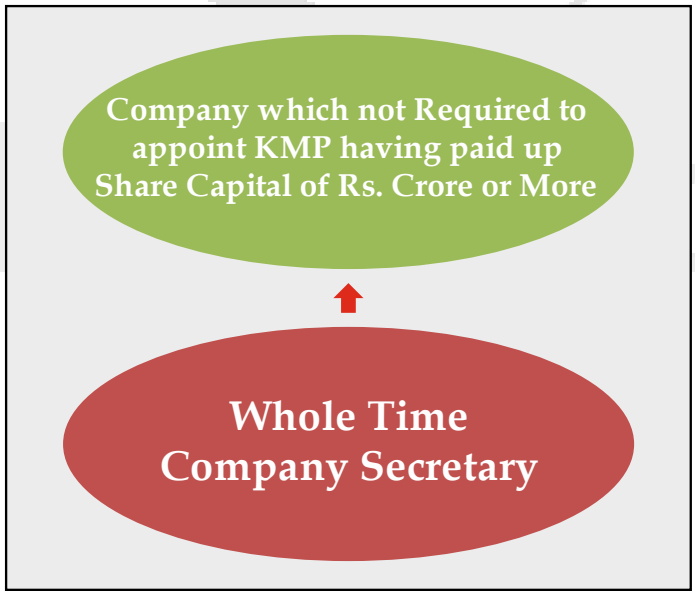
Following Companies are required to appoint KMP;



Company Secretary

Further, as per recently notified Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole time key managerial personnel as discussed above and **which is having paid up share capital of Rs. 5 Crores or more** shall have a whole time Company Secretary.





Restrictions Regarding Appointment of Key Managerial Personnel

Holding of office in other companies by Whole Time Key Managerial Personnel (KMP)

It has been provided under the act that a whole-time key managerial personnel shall not hold office in more than one company at the same time, except:

Ques. Whether MD, WTD & Manager can be appointed as Director in any other Company.

Ans. As per Third Proviso to Sub Section 3 of Section 203

"Nothing contained in this sub-section shall disentitle a Key Managerial from being a director of any Company with the permission of the Board."

A Key Managerial Personnel can be appointed as Director in other Companies if he fulfills the following Condition:

- Before appointment as Director, KMP requires permission of Board of Directors of Company.
- By passing of Board Resolution in the company in which he is KMP.

Therefore, it is clear from above clarification that **"KMP CAN BE APPOINTED AS POSITION OF DIRECTOR IN OTHER COMPANIES"**

Ques. Can KMP be Appointed in Subsidiary Company?

Ans. KMP Can be appointed as KMP in the Subsidiary Company.

Ques. Can a person be Managing Director in two companies?

Ans. As per 203 of Companies Act, 2013

A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

As PER Sub Section 3 of Section 203:

- A company may appoint or employ a person as its MD, if he is the MD or Manager of one and not more than one other company.

{Such person should not be MD in more than one Company at the time of appointment, But he can be Director in any no. of Company as allowed by Companies Act, 2013. His Directorship in other Companies will not affect his appointment as MD in second Company.

For Such appointment

- Specific notice of meeting has been given to all the directors then in India.
- Such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting. **(Unanimous Resolution)**

{Resolution by Circulation will not work in this situation.

Conclusion : Therefore, it is clear from above clarification that **"A Person can be a Managing Director in two Companies".**

Chairperson of the Company Cannot be Managing Director or CEO

In all the advanced Economies of the World there is a clear demarcation in the responsibilities of the Chair person of the Company in that he is expected to occupy only a non-executive position on the Board. This philosophy has also been advocated in the voluntary guidelines on corporate governance issued by the Department of Company Affairs in the year 2010. Taking a cue from the above, legal sanction to this ethos has been accorded in Section 203 of the Act.

Except in cases where the Articles of the Company ordain otherwise or where the company carries on multiple businesses, the chairperson of the company should not be appointed as the Managing Director or the CEO of the company. This is a welcome provision as it will ensure that there is no conflict of interest arising out of the same person acting as the Chairman and Managing Director of the company.

In case of a company which has multiple lines of business in respect of which CEOs have been appointed for each line, the chairperson can play the dual role of being the CEO of the company as well. MCA has vide its notification dated July 25, 2014 clarified that those public companies which have a paid up share capital of Rs.100 Crore or more and an average turnover of Rs 1000 Crore or more and which are engaged in multiple businesses and have appointed chief executive officers for each such business can have a chairperson who is also holding the position of the CEO in the company.

A CEO need not be a Director of the Company

In addition to the above, it is pertinent to note that the act also contains specific definitions to the terms "Chief Executive Officer" and "Chief Financial Officer".

As per Section 2(18) a CEO , refers to an officer of the company who has been designated as such by it. From the above definition it follows that a person designated by the company as CEO need not be a Director of the Company although in Section 203 he is equated with Managerial persons such as the

Managing Director, the Manager or in their absence, the whole time director. The remuneration payable to the CEO shall not be subject to regulation under section 197 of the act read with schedule V in the act , unless he is part of the Board or he is appointed as a manager in addition to his designation as CEO.

Manner of Appointment of KMP

Below given is procedure for appointment of Key Managerial Personnel :

Step-I

Convene A Board Meeting : To alter the object clause in memorandum of association of company by giving notice of at least 7 days.

Step-II

Hold the Board Meeting :

- At the Board meeting pass a resolution for appointment of Key Managerial Personnel.
- Such Board Resolution must be subject to approval of Share holder.
- Get the Approval of Shareholder for such Appointment in subsequent General Meeting.

Step-III

Filing and fees :

(I) File Form No. MGT-14

(Filing of Resolutions to the Registrar under section 179(3) Rule 8(2) and Section 117(3) (c) with the Registrar along with the requisite filing within 30 days of passing the Board resolution, along with given documents:-

- Certified True Copies of the Board Resolutions;
- Appointment agreement of KMP

(II) File Form No. DIR-12 : (Filing of particulars of appointment to the Registrar under section 15 Rule 8) with the Registrar along with the requisite filing within 30 days of passing the board resolution, along with given documents:-

- Appointment Letter
- DIR-2 "Consent of Director"
- DIR-8 "Non Disqualification of Director"
- Directorship in other companies

(III) File Form No. MR-1 : (Filing of Return of Appointment to the Registrar under section 196 Rule 3) with the Registrar along with the requisite filing within 60 days of passing the Board resolution, along with given documents :

- Certified true copy of Board Resolution
- Copy of letter of consent to act as a managing director, whole time director, or manager

Manner of Appointment of CS, CFO, CEO

Below given is procedure for appointment of Managerial Personnel :

Step-I

Convene A Board Meeting : To appoint CS, CFO and CEO by giving Notice of at least 7 days.

Step-II

Hold the Board Meeting :

- At the Board meeting pass a resolution for appointment of CS, CFO And CEO.

Step-III

Filing and fees :

1. File Form No. MGT-14 : (Filing of Resolutions to the Registrar under section 179(3) Rule 8(2) and Section 117(3) (c) with the Registrar along with the requisite filing within 30 days of passing the board resolution, along with given documents :

- Certified true copies of the board resolutions;
- Appointment agreement of KMP

2. File Form No. DIR-12 : (Filing of particulars of appointments the Registrar under section 15 Rule 8) with the Registrar along with the requisite filing within 30 days of passing the Board resolution, along with given documents :

- Appointment Letter
- DIR-2 "Consent of Director"

- DIR-8 "Non Disqualification of Director"
- Directorship in other Companies

3. File Form No. MR-1 : (Filing of Return of Appointment to the Registrar under section 196 Rule 3) with the Registrar along with the requisite filing within 60 days of passing the board resolution, along with given documents:-

- Certified true copy of Board Resolution
- Copy of letter of consent to act as a CS, CEO and CFO.

Q. Whether provisions related to the Managerial Remuneration are applicable on all KMPs?

Ans. Section 203 of the COMPANIES ACT, 2013 provides that certain class of companies [refer rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial) Rules, 2014] are required to appoint following whole time KMP:-

- Managing Director or Chief Executive Officer or Manager and in their absence whole-time director;
- Company Secretary; and
- Chief Financial Officer

Section 197 and Schedule V to the COMPANIES ACT, 2013. Section 197 prescribes certain caps and compliance only in regard to the remunerations of Directors including MD, WTD and Manager.

Therefore, the provisions related to the managerial remuneration are not applicable on all KMPs but they are applicable only on such managerial personnel as mentioned in Section 197 and Schedule V to the Companies Act, 2013. Therefore, CS and CFO not being managerial personnel as mentioned in Section 197, the provisions of Section 197 will not apply on them.

Sitting Fees : A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof: Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

Other Provisions Regarding KMP

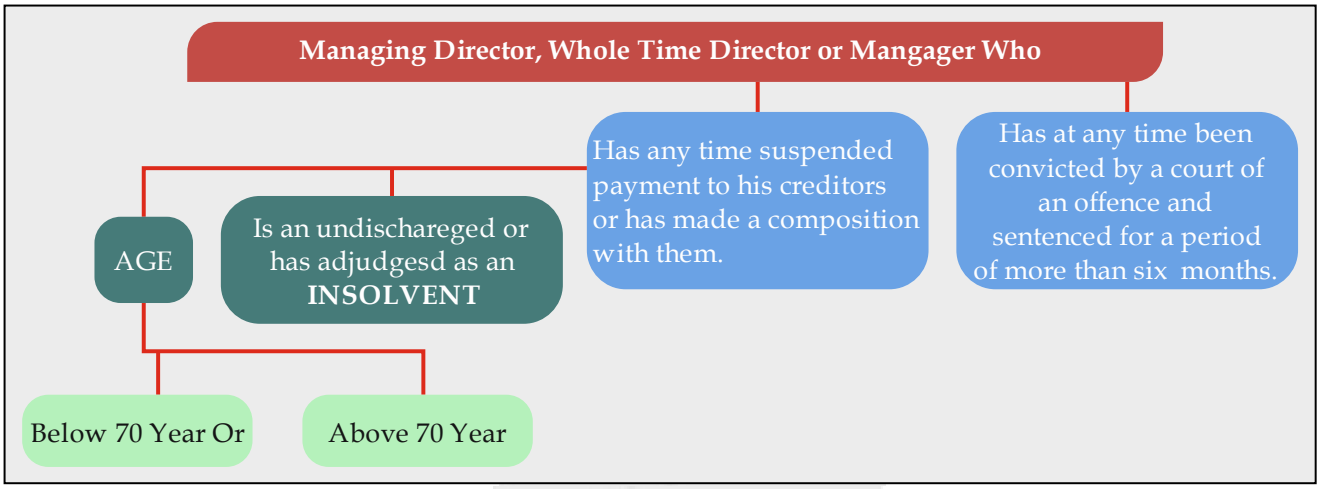
Tenure

Appointment of Managing Director, Whole – Time Director or Manager ***shall not for a term exceeding five years*** *at a time.*

Reappointment

The company may re-appointment them for next term before expiry of their present term ***but not earlier than one year before expiry of the current term.*** *This means, company may re-appoint them for next term in last one year of current term.*

Disqualification for Appointment of MD, Manager or Manager : No Company shall appoint or continue the employment of any person as



Penalty for Contravention

On Company:	**Fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-**
On every director and key managerial personnel of the company who is in default	Fine which may extend to Rs. 50,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the contravention continues.

Notes :

- *A KMP is included within the meaning of "Officer in Default" under the Act.*
- *A document or proceeding requiring authentication by a company; or contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf.*
- *Details regarding KMP, changes therein and the remuneration paid to them are required to be disclosed in the Annual Return of the Company*
- *Explanatory statement should disclose the nature of concern or interest, financial or otherwise, of every key managerial personnel, in respect of each items of special business to be transacted at a general meeting*
- *A person whose relative is employed as a KMP in a company is disqualified to be appointed as auditor in that company*
- *Company is required to maintain a register of the KMPs at its registered office containing particulars which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.*
- *A return of every appointment and change in KMP has to be filed with the ROC within 30 days of the appointment or the change as the case may be*
- *The key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.*

Company Meetings

Company Meetings & Proceedings

Board meetings are crucial for a company's development as these formal meetings are held to devise policies, drive the management, strategies, and evaluate the expectations of the stakeholders.

There is an old proverb that "Two heads are always better than one"

When two or more than two persons comes together to discuss matters of common interest, there is said to be a meeting.

Generally, the purpose of meeting is to consider issues of common interest to its members.

A company meeting may be defined as a concurrence or coming together of at-least a quorum of members in order to transact either ordinary or special business of the company.

"Meeting is the congregation of several persons in a particular place for the purpose of discussing some important matter and expressing their opinion on the questions raised"

A 'meeting may be defined as any, assembly or coming together of two or more persons for the transaction of some lawful business of common concern.

Like any other association, a company must also hold meetings for its proper functioning. The shareholder or members of a company, who are the real owners, must have the opportunity to collectively discuss the affairs of the company and to exercise their ultimate control over the management of the company. Similarly, the directors, in whom the management of the company is vested, must come together periodically to function as a team and take collective decisions regarding the business policy of the company and to exercise overall supervision over the management. Thus, the management of a company is really carried on through meetings of shareholders and directors and the resolutions adopted therein.

"A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company."

According to P.K. Ghosh, "Any gathering, assembling or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting."

After knowing the purpose and concept of the meeting it can be concluded that meeting is the congregation of several persons in a particular place for the purpose of discussing some important matters and expressing their opinion on the questions raised.

In comparison of any ordinary meeting company meetings are of a great importance, because all the policy matters of the company are being decided in the meetings of the company in the presence of the members called the shareholders and the company's management called the Board of Directors, after following all the procedures as required by the law and the A.O.A. of a company

Characteristics of a Company Meeting

The characteristics of a company meeting are as follows :

1. Two or more persons (members and the mgt. of the company) must be present at the meeting.
2. The assembly of the persons must be for discussion and transaction of some lawful business.
3. A previous notice would be given for convening a meeting. (21 days' notice is common in all type of meetings).
4. The meeting must be held at a particular place, date, and time.

5. The meeting must be held as per provisions/ rules of companies act.
6. Notice to be given by the secretary after the time and place have been fixed by the directors
7. Even the shareholders can call a meeting as an extraordinary general meeting (EGM)
8. The NCLT can call an Annual General Meeting (AGM)

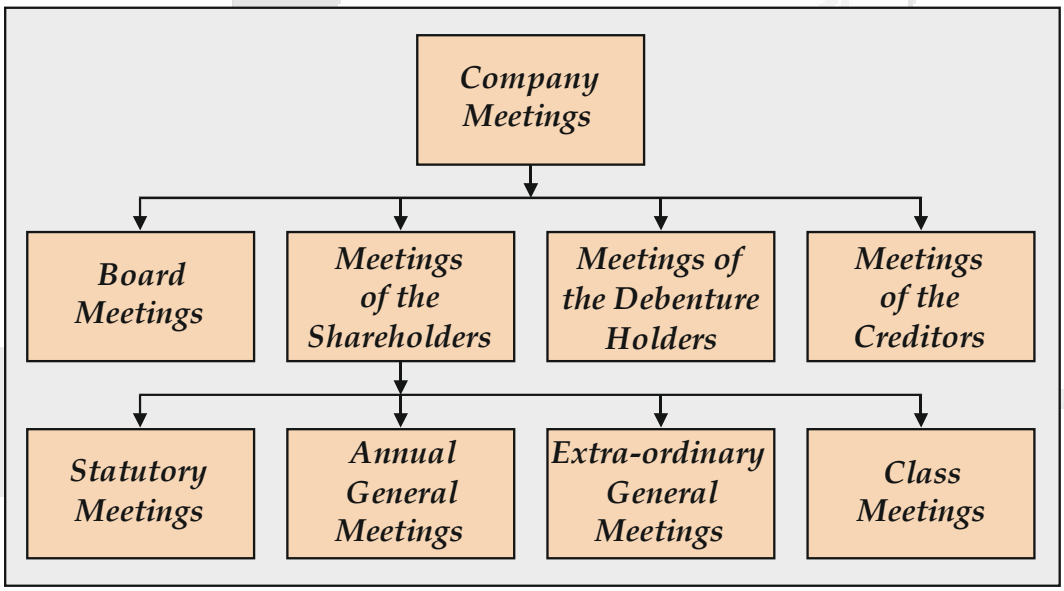
Significance of Company Meeting : Company meetings are of considerable importance. Meetings may be of shareholders and directors. The business polices of a company are discussed and decided at different meetings held according to the rules laid down in the A.O.A.

Requisites of Company Meetings

1. **Two or More Persons :** To constitute a valid meeting, there must be two or more persons. However, the articles of association may provide for a larger number of persons to constitute a valid quorum.
2. **Lawful Assembly :** The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.
3. **Previous Notice :** Previous notice is a condition precedent for a valid meeting. A meeting, which is purely accidental and not summoned after a due notice, is not at all a valid meeting in the eye of law.
4. **To Transact a Business :** The purpose of the meeting is to transact a business. If the meeting has no definite object or summoned without any predetermined object, it is not a valid meeting. Some business should be transacted in the meeting, but no decision need be arrived in such meeting.

Kinds of Company Meetings

The meetings of a company may be classified into the following categories:



1. Meeting of Board of Directors : The directors of a company exercise most of their powers in a joint meeting called the meetings of the Board. In the case of every company, a meeting of the Board of Directors must be held:

- At least one meeting in every three months.
- At least four such meetings shall be held in every year (section 285)

The object of this section is to ensure that the Board meetings are held at reasonably frequent intervals so that the directors may be in touch with the management of the affairs of the company.

Notice of the meeting: -Notice of every meeting of the Board of Directors must be given in writing to every director in India and also to a director who is outside India for the time being (section 286).

There is no need to send notice, if the Articles provide for meetings to be held at regular intervals e.g. monthly, the time and place being fixed. But the practice says a reasonable notice must be given of the meeting.

The notice should mention the place, time, and date of the meeting. The day must be a working day and time should be during business hours unless agreed otherwise by all the directors.

Agenda: It means things to be done or it is a statement of the business to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. It helps directors to come prepared for the meeting.

Quorum: There must be proper quorum for every meeting. The quorum for the Board meeting should be at least two directors or one third of total strength of the Board of directors, whichever is more subject to a minimum of two directors.

Directors who are interested in any of the resolution to be passed at the Board meeting shall not be counted for the purpose of quorum of that resolution. The directors who are not interested in the resolution shall be the quorum for that item, provided there number is not less than two (section 283).

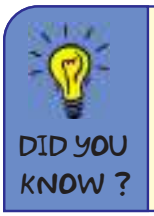
If the meeting could not be held for want of quorum then unless the Articles otherwise provides the meeting shall automatically stand adjourned till the same day in the next week and at the same time and place. If the adjourned day is public holiday it shall shift to next day.

Board meetings are called for the following business :

- **Share Related :** To issue shares and Debentures, makes calls on shares, forfeit the shares and transfer the shares.
- **Financial Related :** To fix the rate of dividend, to take loan in addition to debentures and to invest the wealth of the company.
- **Administrative Matters Like :** To think over the difficulties of the company and to determine the policies of the company.

Meeting of the committees of Directors : The BOD may form certain committees and delegate some of its power to them, these committees should consist of only directors. Such delegation of powers to such committees is to be authorized by the AOA and should be subject to the provisions of the companies act.

In large company's routine matters like allotment, transfer and finance are handled by such sub- committees of the BOD.



400 is the number of places where the phrase 'As may be Prescribed' have been mentioned in the new Act.

2. Meetings of The Shareholders

(a) Statutory Meeting :

- Statutory meeting is the first meeting which company conducts after its commencement.
- To be conducted once in life time by the company limited by shares, either within one month from the date of commencement of the business or within six months.
- Every member also must be given a copy of report at least 21 days before the date of the meeting and a copy is also to be sent to the Registrar for registration.
- Every director or any other officer of the company who is in default shall be punishable with a fine which may extend to Rs. 500.

(b) Annual General Meeting (AGM) :

- The first meeting can be held within 18 months of the incorporation.
- Under Section 96 of the companies act, every company shall hold a general meeting as annual general meeting every year. Except one-person company.
- There after subsequent AGM must be held by the company every year within 6 months of the closing of the financial year but the interval between any two AGM must not be more than 15 months.
- Notice of AGM can be either in writing or also in electronic form. The notice should consist of place, day, date and the proper hour of the meeting.
- The member should get the notice at least for 21 clear days.
- The notice should consist of place, day, date and the proper hour of the meeting. It should also contain agenda of meeting.
- Every member of the company, legal representative of deceased and assignee of insolvent member, auditor and every director of the company should get notice.
- After first meeting, Subsequent AGM should be held on the earliest of the following dates:
  - 15 months from the date of last annual general meeting.
  - the last day of the calendar year (December 31st).
  - 6 months from close of the financial year (September 30th).

(d) Extra ordinary General Meeting :

- It is a general meeting which is held between two AGM'S.
- Every meeting which is not an AGM or statutory meeting is EGM.
- It is being called to discuss any particular matter or special business or any business of urgent importance to the company.
- This meeting is called for the consideration of any specific subject, decision of which cannot be postponed to the next AGM.
- This meeting may be called by the Directors or by the member's according to Section 100 of the Companies Act, 2013.
- It can be called for the following reasons:

1. Alteration of any clause of MOA,
2. Changes in the AOA,
3. Scheme of the reduction of share capital etc.

Meetings of Creditors :

- This type of meetings is called when the company proposes to make a scheme for arrangement with its creditors.
- Companies Act laws down the procedure and give power to the company to compromise with the creditors.
- The Court may order a meeting of the creditors on the application of the company or of liquidator in case of a company being wound-up.

Meeting of Debenture Holders :

- Meetings of the debenture holders are held according to the conditions contained in the debenture trust deed.
- These meetings are called time to time where the interests of debenture holders are involved at the time of reconstruction, reorganization, amalgamation or winding up of the company.
- Debenture trust deed contains all rules and regulations related to conduct of meeting and all things related to it.

Meeting of Creditors and Contributories :

- The main purpose is obtaining consent of creditors and contributories to the scheme of rearrangement or compromise.
- It is to save the company from financial difficulties.
- Sometimes, the court may also order to conduct meeting.
- The term "contributory" covers every person who is liable to contribute to the assets of the company when the company is being wound-up.

(e) Class Meetings : When the meetings of particular class of a shareholder takes place, it is known as class meeting. Such as preference shareholders etc.

- The AOA defines the procedure for calling such meetings.
- This meeting is called for the alteration in the rights and privileges of the shareholders and for the purpose of conversion of one class of shares into another.

Essentials of a Valid Meeting

Proper Convening Authority: (Directors or Tribunal) The resolution to call a general meeting must be passed at a Board meeting.

- The authority to call a general meeting is the board of directors of the company.
- The notice of the meeting should be issued under their authority, granted at a duly constituted meeting of the board, or passing a resolution by circulation.
- A single director has no power to convene a meeting.
- The secretary of the company has no authority to call a general meeting unless the Board resolves and authorises him to do so.

- Under certain circumstances, the requisitions, the Central Government, or the Company Law Board (the Tribunal after its constitution) may call a general meeting in case of default by the directors.

Notice : A meeting in order to be valid must be convened by a proper notice issued by the proper authority.

- Notice to be in writing containing agenda (subject matter) and the date & time of the meeting.
- A proper notice to every shareholder, auditor, and directors of the company at least 21 days before the date of the meeting.
- A shorter notice for Annual General Meeting will be valid, if all members entitled to vote give their consent.
- Every notice of meeting of a company must specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted thereat.

Quorum : Quorum is the minimum number of members who must be present at a meeting as required by the rules.

- The main object of the quorum is to avoid decision taken by small majority which may not be acceptable to vast majority of members.
- The AOA of the company lay down the quorum for different meetings of the company.
- In the absence of any provision in the articles, the provisions as to quorum laid down in the Companies Act, 2013 (under Sec.103) will apply. (it is explained below)
- The company Act has fixed two as the minimum numbers to complete the quorum in private company and five in case of a public company.

If the quorum does not complete within half an hour of the prescribed time, meeting will be adjourned to the same time place and day in the next week.

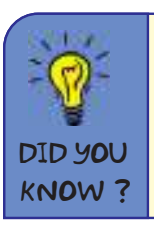
*Section 103 of Companies Act provides that the quorum for general meetings of shareholders shall be :

(a) five members personally present in case of a public company if the number of members as on the date of meeting is up to 1000;

(b) 15 quorums if number of members as on the date of meeting is more than 1000 but up to 5000;

(c) 30 quorums are required if number of members exceeds 5000 than;

(d) Two members personally present for any private company or articles may provide otherwise.



Sections 138, 141 and 142 have also been amended by doubling the imprisonment term from one year to two years and the period of time to issue demand notice to the drawer from 15 days to 30 days.

Chairman of the Meeting : Chairman of the meeting is the person who presides the meeting. He can be explained as "the umpire of debate."

- Chairman is the chief authority in the conduct and control of the meeting.
- He is the judge of admissibility and the upholder of order and decorum.
- As per section 175 of the companies act, 1956 unless the articles otherwise provide the members present in the meeting shall elect one of them as Chairman by showing of hands.
- The entire responsibility for the smooth conducting of the meeting rests on the shoulders of the chairman of the meeting. So, he should be an efficient and experienced person.

Rights and Powers of Chairman

1. To maintain the order and decorum of the meeting.
2. To decide the priority in which the members will speak.
3. To stop discussion if it has become sufficiently long and endless.
4. To order and take a poll.
5. To get disorderly persons removed from the meeting.
6. To use casting vote.
7. To exclude any matter from the minutes of the proceedings of the meeting, which is irrelevant, etc.

Duties and Responsibilities of The Chairman

1. To act in the interest of the company.
2. To see the regularity of the meeting.
3. To follow strictly the rules of company law and AOA.
4. To conduct the business of the meeting according to its agenda.
5. To preserve peace and order in the meeting.
6. To act within the jurisdiction of his powers.
7. To listen to the minority.
8. To take correct and valid decisions.
9. Correct use of powers of adjournment of the meeting.
10. Bonafide use of the casting vote.
11. To sign the minutes having seen that they are properly and correctly entered in the minute Book.

Proxy : A proxy is an authorized agent of the member for the purpose of voting. The term proxy is also applied to the instrument by which the appointment to act on his behalf is made by the member)

Voting and Poll : In order to ascertain the sense of a meeting voting may be: By show of hands or by poll.

Resolutions

Business transacted at all the meetings of the company is recorded in the form of resolution. Every item included in the agenda is put before the meeting in the form of written approval, motion for discussion and decision. When the motion is approved by the required majority of members present, it becomes a resolution.

Types of The Resolutions : Three types of resolutions are recognized by the act and they are:

- Ordinary resolution.
- Special resolution.
- Resolutions requiring special notice.

An ordinary resolution is that which is passed by a simple majority at any general meeting of the shareholders. The resolution may be passed by a show of hands or by a poll.

Following are some matters which can be decided by an ordinary resolution :

- Approval of statutory report.
- Approval of director's report.
- Approval of final accounts.
- Declaration of dividends.
- Appointment of directors.
- Election of directors.
- Issue of shares at discount.
- Appointment of auditors and their remuneration.
- Alteration of share capital.
- Change in the rights of shareholders of any class.
- Creation of reserve fund.
- Conversion of fully paid-up shares into stock.
- Sale of the whole or part of the company's undertaking or business.

Points to Remember

- Director can participate in the Board meeting through video conferencing or other audio-visual mode as may be prescribed
- Notice of not less than seven days in writing is required to call a board meeting and notice of meeting to all directors shall be given, whether he is in India or outside India by hand delivery or by post or by electronic means.
- The participation of director at Board meeting through video conferencing or by other electronic means shall be counted for the purpose of Quorum
- Section 173 provides the participation of directors in a meeting may be either in person or through video conferencing or other audio-visual means, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.
- The Chairman may adjourn a meeting with the consent of the members and shall adjourn a meeting if so, decided by the members. The meeting may, however, be adjourned at any time. It may be adjourned after some items of business have been transacted and the remaining items can be transacted at the adjourned meeting.

Winding Up of a Company

Introduction: A company is created by law and the end of a company also takes place only by a legal procedure. The process for the dissolution of a company may take any of the following procedure.

1. Under a scheme of reconstruction and amalgamation, a company may be dissolved if the court (now Tribunal) orders. (section 394)
2. When company is defunct the registrar may strike off the name from the records. (section 560)
3. Through winding up process. (section 425)
   - The term winding up or liquidation of a company means the end of a company's affairs and operations. All the assets of a company are sold and debts are paid out of the proceeds. If there is any surplus left with the company that is divided among the different members of the company.
   - It is the process whereby the life of the company is ended and its property is administered for the benefit of its creditors and members.
   - During this process a liquidator is appointed to take control of the company. The liquidator will be responsible for the assets, debts and final distribution of the surplus to the members.
   - It is the process for discharge of liabilities and returning the surplus to those who are entitled for it.
   - But even a company which is making profit can be wound up is the special feature of winding up, which is different from that of the process of insolvency.

According to Pennington, Winding up is a process by which the management of a company's affairs is taken out of its directors hands, its assets are realized by a liquidator and its debts are paid out of the proceeds of realization and any balance remaining is returned to its members. At the end of the winding up, the company will have no assets or liabilities, and will therefore be simply a formal step for it to be dissolved, that is, for its legal personality as a corporation to be brought to an end.

Prof. Gower defines, "Winding up of a company is a process whereby its life is ended and its property is administered for the benefit of its creditors and members. An administrator, called liquidator is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

According to **A. Ramaiyan**, "Winding up is a means by which the dissolution of a company is brought about and its assets realised and applied in payment of its debts and after satisfaction of the debts, the balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company."

Winding up is a process by which the dissolution of a company is brought about. In this process a liquidator is appointed to realise the assets, pay the debts of the company out of the assets so realised and to distribute the balance, if any, among the members of the company.

How can be company be wound up ?

- By passing a special resolution
- If there is a default in holding the statutory meeting
- Failure to commence the business
- If there is reduction in the membership of the minimum number of members as per the statutory requirement
- If it not able to pay its debts

Modes of Winding Up

- Compulsory winding up under the supervision of the court

  Compulsory winding up may happen for just and equitable reasons also.

  The just and equitable grounds can be like loss of substratum, where there is dead lock in the management, etc.
- Voluntary winding up (Members voluntary winding up and creditors voluntary winding up)
- Voluntary winding up subject to the supervision of the court.

Winding Up Procedure

- A petition for winding up has to be filed by the concerned person to the prescribed authority
- Liquidator to be appointed to safeguard the property of the company
- Then the court will hear the matter and pass necessary orders. It can dismiss the petition or pass an order of winding up

Dissolution of the Company

- When the company ceases to exist as a corporate entity for all practical purposes it is said to have been dissolved.
- Dissolution has to be declared by the court.
- It will not be extinct and will be kept under suspension for 2 Years.
- The order has to be forwarded by the liquidator to the Registrar of the Companies within 30 days from the date of the order of dissolution.

Difference between Winding Up and Dissolution : Generally, winding up and dissolution are used interchangeably. But a company is not dissolved immediately on the commencement of winding up proceedings. Winding up precedes dissolution. During winding up stage, a liquidator is appointed who takes control of the company, collects its assets, pays its debts and distributes the surplus, if any, among the members in accordance with their rights.

Dissolution (section 481) provides that when the affairs of the company have been completely wound up or for want of assets or other reason, it is not possible to proceed with winding up and the tribunal considers it just and reasonable, it may order the dissolution of the company.

Modes of Winding Up

The company may be wound up in any of the following ways under section 425(1) of the companies Act.

1. Compulsory winding up (under the order of the Tribunal (section 433)
2. Voluntary winding up. This can be (under section 484) :
   (a) Member's voluntary winding up. (when company is solvent)
   (b) Creditor's voluntary winding up .(when company is not solvent) (c)

Grounds for Compulsory Winding Up : (According to sec.433, the Tribunal may order winding up on the following grounds) :

1. By special Resolution.

2. Default in holding statutory meeting or delivering statutory report to the registrar.(By the registrar or a contributory)
3. Failure to commence business within 1 year of incorporation or suspend business for a whole year.
4. Reduction in number of members below minimum.
5. Inability to pay its debts.(where the creditor to whom company owes a sum exceeding to Rs. 500 and fails to pay it within 3 weeks from the date of demand.)
6. Just and equitable (under this clause entire matter is left to the wide and wise judicial discretion of the Tribunal depending upon the facts and circumstances of each case) Some of such grounds are :
   (a) Where the substratum of the company is gone.
   (b) Where there is complete deadlock in the management of the company.
   (c) Oppression of minority.
   (d) Where the company is formed for illegal purpose.
   (e) Insolvency of the company.
   (f) A bubble company.
   (g) Sick industrial company.
   (h) Where company is working against (sovereignty and integrity of India, security of state, public order, morality etc.)

Under sec 439 of the companies act, the petition for the winding up of a company may be presented by any of the following :

1. Petition by the company in case of special resolution has been passed in the meeting of the company.
2. Petition by the creditors in case company is unable to pay its debts and the same is not time-barred under the limitation act.
3. Petition by the contributors in case of any default by the company in filing any statutory report or meeting or in case there is deadlock in the mgt. or it does not commence it business in the prescribed time.(The contributory has to be original allottee or through transmission.
4. Petition by the Registrar in case of any default in conducting statutory meeting / or sending statutory report, if fails to commence its business, if the numbers fall below minimum, unable to pay its debts etc.
5. Petition by any person authorized by central or state Government (if the company's business is being conducted to defraud the creditors, members or any other person as per investigation made by the investigator.

Effect of the winding up order will be as follows :

1. The company and the petitioner are bound to file a certified copy of the winding up order with the Registrar within 30 days of the order.
2. The powers of B.O.D. are terminated.
3. No suit or legal proceeding pending against the company can be proceeded with after the order of the winding up, without the permission of the Tribunal.
4. Any debts payable at future will be payable immediately on the issue of winding up order.
5. The official liquidator by virtue of his office will act as the liquidator of the company.

6. The winding up order will be executed in such a way as to favor all the creditors and contributories of the company as if such an order has been made on their joint petition.
7. The tribunal issuing the winding up order shall have the right to dispose of any pending or new suit against the company. Any suit or proceeding lying pending in another Tribunal shall be transferred to the Tribunal which has issued the winding up order

Voluntary Winding Up

Voluntary winding up means winding up of the company by the members or the creditors without interference by the Tribunal.

The following are the conditions for voluntary winding up of a company under sec. 484 of the companies act. 1956.

1. Expiry of the duration or happening of event. (Fixed by the articles, provide to dissolve the company.)
2. By passing special resolution to wound up the company voluntarily.

Consequences of Winding Up

After passing the resolution for winding up of the company, it must cease to carry on the business except for the benefit of winding up of company. (sec. 487)

After the commencement of the winding up of company, transfer of shares is restricted.

Types of Voluntary Winding Up

Members Voluntary Winding Up : A members voluntary winding up is possible only in case the company is solvent and has to carry out the following :

1. **Declaration of Solvency :** According to sec. 488 of the companies Act, the B.O.D. will have to make a declaration of solvency , stating clearly that after full enquiry in the matter they are of the opinion that company is able to pay its debts in full within three years from the commencement of the winding up.
2. It must be made within five weeks from the date of passing of resolution for winding up of a company, and one copy to Registrar must be delivered.
3. **Appointment of Liquidator and Determination of His Remuneration :** According to sec.490 of the Act. A meeting of the members is called for the winding up of the company, liquidator is appointed and his remuneration is also fixed in the same meeting. Very often the secretary of the company is appointed as liquidator of the company.

Board Power to Cease on Appointment of Liquidator (Sec. 491)

According to sec.492 if the office of the liquidator is vacated due to death, resignation or any other reason than liquidator is appointed in the general meeting according to an agreement made with the creditors.

A notice of appointment of liquidator and any change in it must be notified to the Registrar within 10 days of the same. (sec.493)

As per sec.494 of the act the liquidator cannot accept shares of the company without the sanction of a special resolution of the company.

To liquidator must call the every year general meeting of the company and must lay out the progress of winding up before the members. (sec.496

4. Final Meeting and Dissolution : The liquidator calls the last meeting of the company when all the affairs have been completely over. This meeting is called by giving a notice in the official Gazette and in leading newspapers but the time should not be less than one month. The object of holding such meeting is to discuss the details of accounts and explanations of them in the general meeting of the company. Within one week of such meeting a copy of final account is sent to the Registrar. The Registrar on receipt of it enters the details and the company is dissolved after three months from the date of registration. (sec.497)

Creditors Voluntary Winding Up

Such type of winding up takes place when the company is not in a position to pay its debts and no declaration of solvency is made in it. The various provisions applicable to it may be enumerated as follows :

1. **Meeting of Creditors :** The meeting of the creditors is called on the same day or on the next day in which the meeting of the members has been called regarding the winding up of the company. Information of the meeting must be given through official Gazette and in two leading newspapers.(sec. 501& 502)
2. All the statements of affairs are placed in the meeting of creditors. Specifying therein the name of the creditors and their claims against the company. {Sec.500(3)}
3. A copy of the resolution for the winding up of the company must be filed with the Registrar within 10 days. (Sec. 501)
4. Appointment of liquidator and committee of inspection. This is being done at the time of passing of the resolution of the winding up by the creditors and members of the company, as per sec. 502 & 503 of the act. Committee of inspection consists of maximum five members appointed by the creditors.
5. The remuneration of the liquidator is fixed either by the committee of inspection or by the creditors. If it is not fixed by the both, then it is decided by the Tribunal itself. (sec. 504)
6. Board powers ceases just after the appointment of the liquidator. (sec.505)
7. As per sec.506 of the act in case of death, resignation or for any other any reason office of the liquidator is remains vacant, such vacancy is filled by the creditors in the general meeting of the company.
8. The liquidator cannot take shares of any company as a consideration for the transfer without the permission of the Tribunal or the committee of the inspection.(sec. 507)
9. **Final Meeting and Dissolution :** When all the affairs of the company are wound up, liquidator calls the final meeting of the members and creditors. The entire books of accounts are presented there in the meeting. The information must be made by giving an advertisement in a leading newspaper and in the official Gazette also. Lastly, the liquidator files the copy of last meeting proceeding with the Registrar and he registers the same in his records. The company in this way is wound up after three months from the date of registration.